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ALEXANDER L. STEVAS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

PUERTO RICO ELECTRIC POWER AUTHORITY,
Petitioner,

v.

GENERAL ELECTRIC COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

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QUESTIONS PRESENTED*

1. Whether the Supreme Court of Puerto Rico's dismissal of the action on the grounds that in the federal court there is a right to trial by jury results in :

   (a) destruction of the concept of concurrent jurisdiction as it applies to Puerto Rico;

   (b) a denial to the litigants of Puerto Rico of their right to bring actions under federal law in the courts of Puerto Rico;

   (c) discrimination against the application and enforcement of federal laws by the courts of Puerto Rico.

2. Whether under the doctrine of "valid excuse" the Supreme Court of Puerto Rico may dismiss a claim arising under a federal statute brought in a state court,

   (a) when under local laws and policies Puerto Rico courts have jurisdiction to adjudicate claims of the same nature as the one dismissed;

   (b) because the state court does not provide for trial by jury in civil cases;

   (c) because another action was filed subsequently in federal court, when both actions are at the same initial discovery procedural stage.

3. Whether jurisdiction to entertain actions under Section 1964(c) of the Racketeer Influenced and Corrupt Organizations Act is concurrent of the federal and state courts or exclusive of the federal courts.

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*Other defendants are: Twombly, Inc.; Ketty Garcia-Argueta; Ana Evelyn Velazquez-Garcia; and Carlos Velazquez Garcia.

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Petitioner,

v.

GENERAL ELECTRIC COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

The petitioner, Puerto Rico Electric Power Authority ("PREPA"), respectfully prays that a writ of certiorari issue to review the judgment and the order denying a motion for rehearing of the Supreme Court of the Commonwealth of Puerto Rico entered in this proceeding on May 4, 1983 and June 3, 1983, respectively.

OPINION BELOW

The judgment of the Supreme Court of the Commonwealth of Puerto Rico and the order denying the motion for rehearing are not reported; they appear in the Appendix hereto (Appendix A p. 1a and Appendix C p. 13a respectively.). The Resolution rendered by the Superior Court of Puerto Rico, San Juan Section, appears in Appendix B hereto page 4a.

JURISDICTION

The judgment of the Supreme Court of the Commonwealth of Puerto Rico was entered on May 4, 1983. A timely petition for rehearing was denied on June 3, 1983, and this petition for certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1258(3).

STATUTORY PROVISIONS INVOLVED

United States Code, Title 18:

§ 1964. *Civil Remedies*

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter (18 U.S.C. § 1962) may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fees.

STATEMENT OF THE CASE

Petitioner, PREPA, a public corporation and instrumentality of the Commonwealth of Puerto Rico, filed an action before the Superior Court of Puerto Rico against respondent, General Electric Company ("GE") and others, in which five (5) causes of action were alleged. Four of the causes of action were based on local law and the fifth cause of action was predicated under the provisions of Section 4(c) of the Racketeer Influenced & Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c).

That fifth cause of action, in synthesis, contains allegations to the effect that codefendants committed certain criminal acts which constitute a pattern of racketeering

activity in violation of the laws of Puerto Rico and the United States, to wit:

1. they conspired and acted in Puerto Rico and elsewhere to defraud petitioner by offering and paying a bribe to one of its officers in order to fraudulently and illegally obtain and execute a contract with the petitioner;

2. the conduct and acts performed by respondent and others constitute a violation of 18 U.S.C. § 1962, which violation has caused damages against the petitioner, injuring it in its business and property.

Respondent, in its answer to the complaint, raised several special defenses, including one of lack of subject matter jurisdiction, on the grounds that all actions brought under the provisions of 18 U.S.C. 1964(c) were of the exclusive jurisdiction of the United States District Courts. Aware that the question of whether jurisdiction to entertain private civil actions under RICO is exclusive of the federal courts or concurrent with the state courts is a novel one, never decided by this Court or any other Court, to our knowledge, on August 31, 1981, petitioner filed another action under RICO, 18 U.S.C. Sec. 1964(c), in the United States District Court for the District of Puerto Rico, to protect PREPA's right to a claim under said statute.

Upon respondent's petition, the Superior Court, under the provisions of Rule 10.4 of the Rules of Civil Procedure of Puerto Rico (32 L.P.R.A. App. II, R. 10.4), held oral argument and received briefs to decide, prior to trial, the jurisdictional question raised by respondent.[1] On January

[1] Respondent argued before the Superior Court that the absence in Puerto Rico Courts of Jury Trials in civil cases constituted a "valid excuse" for said courts to decline exercising jurisdiction to adjudicate civil actions under RICO.

15, 1982, the Superior Court of Puerto Rico, San Juan Section, issued a resolution holding that the jurisdiction over the cause of action created by Section 4(c) of the Racketeer Influenced & Corrupt Organizations Act, 18 U.S.C. § 1964(c), is not exclusive of the United States District Courts and that the Superior Court of Puerto Rico has concurrent jurisdiction over said actions. It made no pronouncement on the "valid excuse" theory.

Respondent filed a petition for certiorari before the Supreme Court of the Commonwealth of Puerto Rico, which, after receiving briefs and oral argument on May 4, 1983, entered judgment reversing the resolution of the Superior Court and ordering it to dismiss the cause of action under 18 U.S.C. 1964(c). A translation of this Opinion is attached. See Appendix A, p. 1a. A timely motion for rehearing was filed and denied *en banc* on June 3, 1983, without giving any grounds therefor.

The judgment entered by the Supreme Court of Puerto Rico does not decide the jurisdictional question of whether the Superior Court of Puerto Rico has concurrent jurisdiction with the United States District Court to entertain an action brought under the provisions of the Racketeer Influenced & Corrupt Organizations Act, 18 U.S.C. § 1964(c). Instead, the judgment sidesteps the issue and invokes the "valid excuse" doctrine under which the state courts may refuse to adjudicate actions brought under a federal statute if they find a valid excuse which does not discriminate against the application of the federal statute.

According to the judgment, the "valid excuse" in this case seems to be predicated on two aspects: (1) that in the federal court the parties enjoy the benefit of a constitutionally protected right to a trial by jury; and (2) that another action had been filed under 18 U.S.C. 1964(c)

before the United States District Court for the District of Puerto Rico, which the Court erroneously assumed was in a more advanced procedural stage than the action before the Superior Court.

For the above two reasons, the Court declined to decide the novel question of jurisdiction over private civil actions under RICO, reversed the Resolution of the Superior Court holding that said jurisdiction was concurrent, and ordered the dismissal of petitioner's action under RICO before the Superior Court.

REASONS FOR GRANTING THE WRIT

I. The Effect Of The Decision Of The Supreme Court Of Puerto Rico Is To Destroy The Jurisdiction Of The Courts Of Puerto Rico Over All Causes Of Action Arising Under Federal Law Which Are Of Concurrent Jurisdiction.

In the decision below, the Supreme Court of Puerto Rico states two circumstances which, in its opinion, constitute "reasonable grounds to decline to make a pronouncement on such an interesting and complex matter like the one herein raised." (See Appendix A, Judgment, p. 3a). One of these circumstances is that in the federal forum the parties have the benefit of a trial by jury in civil cases,[2] a benefit which is not available in the local forum. This circumstance exists in each and every civil case in which the local courts enjoy concurrent jurisdiction over federal causes of action with the federal courts. If this is a valid reason to dismiss the action filed under RICO in the

[2] The Court stated that this is a "constitutional benefit safeguarded by the Seventh Amendment of the Constitution of the United States," a statement which conflicts with this Court's decision in *Balzac v. Puerto Rico*, 258 U.S. 298, 42 S. Ct. 343, 66 L. Ed 627 (1921), holding that the Seventh Amendment does not apply to Puerto Rico.

local court, then every litigant in Puerto Rico with a claim arising under a federal statute will be forced to bring it in the federal court, where there is a jury, and will be denied the option of bringing it in the local court, thus frustrating the congressional objectives inherent in the concept of concurrent jurisdiction.[1]

It is vital to the right of all litigants in Puerto Rico to bring an action under federal statute in the forum of their choice that this Court reaffirm and reiterate that the principles of the doctrine of concurrent jurisdiction apply to Puerto Rico and that they are not affected by the local provisions regarding non-jury trial of civil cases.

II. The Decision Of The Supreme Court Of Puerto Rico Is In Conflict With Prior Decisions Of The Same Court Upholding The Applicability Of The Doctrine Of Concurrent Jurisdiction In Puerto Rico.

In the opinion issued on March 10, 1982 in the case of *Acevedo* v. *Collazo*, 82 J.T.S. 30, the Supreme Court of Puerto Rico held that the Superior Court of Puerto Rico had concurrent jurisdiction with the U.S. District Court to entertain actions under the Federal Civil Rights Act, 42 U.S.C. 1983. Similarly, in *Garcia Mercado* v. *Superior Court*, 99 D.P.R. 293 (1970, cert. den. 401 U.S. 1003 (1971), the Supreme Court of Puerto Rico held that the Superior Court had concurrent jurisdiction with the federal court to entertain an action for damages filed under the provisions of the Jones Act, 26 U.S.C. Sec. 688, and that, since in Puerto Rico there is no jury trial in civil

[1] The decision is all the more untenable because it was petitioner who requested trial by jury. Respondent, for whom the Supreme Court invokes the benefit of trial by jury, did not request it, has repeatedly expressed that it does not want it (alleging interest and prejudice), and would be perfectly happy with a bench trial.

cases, such action brought before the Courts of Puerto Rico would be heard without a jury.

Claims arising under the Civil Rights Act, as well as under the Jones Act, if brought in the federal forum, may be submitted to a jury. The Supreme Court's decision makes no effort whatsoever to distinguish these cases or explain why Civil Rights or Jones Act actions may be heard without a jury, but a civil RICO case may not. In fact, the cases are not distinguishable and the decision below is in clear conflict with them.

III. The Decision Of The Supreme Court Of Puerto Rico Conflicts With Decisions Of This Court Upholding The Power Of The States To Alter, Modify, Or Eliminate Trial By Jury In Civil Cases.

It is well established that states may alter, modify or eliminate trial by jury in civil cases. *Southern Railway Co.* v. *City of Durham*, 266 U.S. 178, 69 L. Ed. 231, 45 S. Ct. 51 (1924); *Chicago Rock Island & Pacific Ry. Co.* v. *Cole*, 251 U.S. 54, 64 L. Ed. 133, 40 S. Ct. 68 (1919); *Walter* v. *Sauvinet*, 92 U.S. 90, 23 L. Ed. 678 (1876). This power of the states extends to cases brought before a state court to claim a right arising under a federal statute. *Minneapolis* v. *Bombolis*, 241 U.S. 211, 60 L. Ed. 961, 36 S. Ct. 595 (1916); *St. Louis & San Francisco R.R. Co.* v. *Brown*, 241 U.S. 223, 60 L. Ed. 966, 36 S. Ct. 602 (1916); *Chesapeake & Ohio Ry.* v. *Carnahan*, 241 U.S. 241, 60 L. Ed. 979, 36 S. Ct. 594 (1916).

The decision of the Supreme Court of Puerto Rico conflicts with these decisions, for in effect it holds that, since the local practice is to hear civil cases without a jury, the courts of Puerto Rico may not adjudicate cases under federal statutes because these cases may be heard by a jury in the federal forum.

IV. The Decision Of The Supreme Court Of Puerto Rico Conflicts With The Decisions Of This Court Which Interpret And Apply The Doctrine Of "Valid Excuse."

It is well settled law that state courts must entertain and adjudicate actions brought before them under federal statutes when their jurisdiction to do so is concurrent with the jurisdiction of the federal courts. 1 *Moore's Federal Practice*, Sec. 0.6(3), p. 237; 1 A *Ibid.*, Sec. 0.201, p. 2015. This is so regardless of whether another action has been filed and is pending in federal court. *Kline* v. *Burke Construction Company*, 260 U.S. 226, 43 S. Ct. 79, 67 L. Ed. 226 (1922); *Stanton* v. *Embry*, 93 U.S. 548, 23 L. Ed. 983 (1877); *Miami County National Bank of Paola, Kan.* v. *Bancroft*, 121 F. 2d 921 (1941); *Cole* v. *Franklin Life Ins. Co.*, 108 F.2d 130 (1940); *American Automobile Ins. Co.* v. *Freundt*, 103 F.2d 613 (1939); *Billy Jack for Her, Inc.* v. *New York Coat, et al.*, 515 F. Supp. 456 (1981); *United Artists Theatre Circuit, Inc.* v. *Nationwide Theatres Inv. Co.*, 269 F. Supp. 1020 (1967).

As an exception to the general rule stated above, this Court has decided that state courts may decline to adjudicate claims brought under federal statutes when there is a "valid excuse" to do so which does not discriminate against the application of federal laws. *Missouri ex rel. Southern Railway* v. *Mayfield*, 340 U.S. 195 L. Ed. 3 (1950); *Testa* v. *Katt*, 330 U.S. 386 (1947); *Herb* v. *Pitcairn*, 324 U.S. 117 (1945); *Douglas* v. *N.Y., N.H. and H.R. Co.*, 279 U.S. 377 (1929); *Mondou* v. *New York, New Haven & Hartford Railroad*, 223 U.S. 1 (1912).

According to these decisions, a state court is not bound to entertain a cause of action under federal law that it would not have to entertain under its local jurisdictional and venue statutes and policies. Thus, a state court's jurisdiction is not enlarged for the sole purpose of

adjudicating actions arising under federal law. This principle has been misapplied and misinterpreted by the decision below:

(a) Under local jurisdictional and venue statutes, the Courts of Puerto Rico must hear a case brought under the facts and circumstances of this case. In Puerto Rico, the Court of First Instance is a court of original general jurisdiction (Law No. 11 of July 24, 1952, Sec. 10 [4 L.P.R.A. Sec. 62]) with jurisdiction to hear and adjudicate actions of the nature of the action herein, namely, a civil action for damages suffered as a consequence of a person's fault or negligence. (Civil Code of Puerto Rico, 1930 Ed. Art. 1802, 31 L.P.R.A. Sec. 5141). In addition, the appropriate and convenient forum is undoubtedly Puerto Rico. Plaintiff is a public corporation and instrumentality of the Commonwealth of Puerto Rico; the contract between the parties was entered into in Puerto Rico, to be carried out therein; and the bid was held in Puerto Rico, where the employee of petitioner who was bribed resided and performed his duties.

In Puerto Rico, there is no statute or policy—be it jurisdictional, of venue or of judicial administration—that would deny petitioner the right to bring a claim under the facts of this case in the courts of Puerto Rico. So much so, that, although the Supreme Court of Puerto Rico has ordered the dismissal of the claim under RICO, the case before the Superior Court continues under other provisions of law, but with the same basic facts. In these circumstances, it is contrary to the decisions of this Court to deny petitioner the local forum under the doctrine of "valid excuse." Those decisions uphold the jurisdictional and venue statutes of the states whereas the decision below goes against them.

b. Even if the reasons advanced by the Supreme Court of Puerto Rico to dismiss petitioner's claim constituted a "valid excuse," they could not justify dismissal because the result would be discrimination against the application and enforcement of federal laws by the courts of Puerto Rico. Since in all cases brought under federal law trial by jury is always obtainable in the federal court, local courts in Puerto Rico may decline to exercise jurisdiction in all such cases simply because they are federal causes of action. The decision below, furthermore, constitutes a refusal by Puerto Rico courts to enforce federal laws, and frustrates the congressional policy of having federal claims heard in state courts.

V. The Decision Of The Supreme Court Of Puerto Rico Is In Conflict With Decisions Of This Court Which Interpret And Apply The Powers And Duties Of State Courts *vis a vis* Those Of Federal Courts Over Causes Of Action Of Concurrent Jurisdiction.

It has been held repeatedly that the pendency of an action in personam does not preclude the filing of the same action in another court of competent jurisdiction. *Kline* v. *Burke Construction Company*, supra, and the other cases cited above, at page 8.

Despite this, the Supreme Court of Puerto Rico stated that it does "not consider it necessary to resolve" the controversy about jurisdiction because petitioner filed an "identical claim before the federal forum," which "is in a procedural stage more advanced than the instant case," and cited only *Barnett* v. *Baltimore & Ohio Railway*, 200 N.E. 2d 473 (1963).

The cited case is a manifestation of the doctrine of "valid excuse" discussed above and offers no support whatsoever for dismissal of petitioner's claim. After considering the applicable local laws, policies and proce-

dures, according to which the state courts could decline to adjudicate a "transitory" cause of action arising outside the state and brought by a non-resident, the court in *Barnett* upheld the principle that concurrent jurisdiction existing under applicable federal law does not have the effect of enlarging state jurisdiction which did not exist under local laws, and dismissed the action stating that there was a prior action pending. The Supreme Court of Puerto Rico in this case has dismissed the *prior* action, because another action was filed subsequently.[4] More importantly, the doctrine of valid excuse is not applicable here because jurisdiction or venue under local laws, policies or procedures is not lacking. On the contrary, Puerto Rico is the undisputed adequate and convenient forum under the facts and circumstances of this case. (See our discussion above, at p. 9). Finally, the Supreme Court stated that the action in federal court was at a more advanced stage of the proceedings than the action in state court. This is simply erroneous.[5] Both claims are at the initial stage of discovery, the parties having submitted first sets of interrogatories. In neither of the cases has any party taken depositions, or submitted requests for admissions or additional interrogatories. Both are far from being ready for trial. (See the attached table marked, EXHIBIT I, App. M p. 83a).

In addition, the proceedings in the case before the Superior Court were stayed by Order of the Court dated

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[4] The Superior Court action was filed on March 10, 1981. The action in United States District Court was filed on August 31, 1981. Admittedly, the second action was filed to protect petitioner's rights since the question of jurisdiction to adjudicate private civil actions under RICO is novel and undecided.

[5] The Supreme Court did not have before it the record in the federal action.

March 15, 1982, pending resolution of the jurisdictional issue in the Supreme Court. This became one of the deciding factors for dismissing the Superior Court claim, so that proceedings are delayed by order of the court and then the case is dismissed because proceedings are delayed. The fact, however, is that, in spite of the delay, proceedings in both cases are at the same initial discovery stage.

The more or less advanced stage of the proceedings in a case has been considered as a factor for a federal court to decline exercising jurisdiction only when the difference is substantial and only in the most exceptional circumstances. In *Colorado River Water Conservation District* v. *U.S.*, 424 U.S. 800, 47 L. Ed. 2d 483 (1976), the only proceeding in the case dismissed had been the filing of the complaint. This was only one factor among many, none of which are present in this case. In *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, 74 L. Ed. 2d 765, (1983), the parties had taken most of the steps necessary to a resolution of the issue in the district court, while in the state court no substantial proceedings had taken place. This justified a reversal of the stay of the district court proceedings, not a dismissal of the state court action. Finally, these cases were decided in the context of the abstention doctrine, which the Supreme Court of Puerto Rico has, apparently, applied in reverse.

VI. The Jurisdiction To Entertain Actions Under Section 1964(c) Of The Racketeer Influenced & Corrupt Organizations Act Is Concurrent Of The Federal And State Courts.

There exists a presumption that the jurisdiction of the state courts is concurrent with the jurisdiction of the United States District Courts. The judicial power of the

United States is distributed among the state courts and the federal courts. Both systems of courts exercise their authority simultaneously over the same territory. The state courts are of general jurisdiction and the federal courts are of special jurisdiction. The state courts are presumed to have jurisdiction. The contrary is presumed regarding the jurisdiction of the federal courts; their jurisdiction has to be alleged and proved.

Article III of the Constitution of the United States does not confer jurisdiction to any court, except to the Supreme Court of the United States. The existence and jurisdiction of all other federal courts depend on Congress, who has the faculty and power to confer jurisdiction to the other federal courts, as well as to provide in which cases their jurisdiction shall be exclusive. Congress has so provided in matters of admiralty and maritime jurisdiction, 28 U.S.C. Sec. 1333; in bankruptcy cases, 28 U.S.C. Sec. 1334; cases under the Interstate Commerce Commission Act, 28 U.S.C. 1336(b); patents and copyrights; 28 U.S.C. 1338; Federal Torts Claims Act, 28 U.S.C. 1346(b); and in federal crimes.

When a statute creates a federal cause of action, it is presumed that both federal and state courts have jurisdiction, unless Congress has expressly established it to the contrary. This doctrine of concurrent jurisdiction has been firmly established and reiterated on numerous occasions by this Honorable Supreme Court. See *Charles Dowd Box* v. *Courtney*, 368 U.S. 502; 82 S. Ct. 519; 7 L. Ed.2d 483 (1962); *Gulf Offshore Co.* v. *Mobile Oil Corp.*, 69 L. Ed.2d 784 (1981).

The presumption of concurrent jurisdiction prevails unless the same is rebutted by an express provision of Congress, an unequivocal implication contained in its legislative history, or the existence of a clear in-

compatibility between the state jurisdiction and the federal interests. See *Gulf Offshore Co.* v. *Mobile Oil Corp.*, *supra*, page 791. In the civil private action involved in the present case none of these circumstances are present and, consequently, the presumption of concurrent jurisdiction should prevail. The Racketeer Influenced & Corrupt Organizations Act (RICO), provides:

> "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States District Court and shall recover threefold the damages he sustains and the costs of the suit, including a reasonable attorney's fee." Section 1964(c).

The above provisions of the law do not contain any language making the actions filed under Section 1964(c) of the exclusive jurisdiction of the federal courts. It has been repeatedly held that the word "may" gives jurisdiction to the federal courts, but not exclusively. It is a permission, not a mandate.

The legislative history of the Racketeer Influenced & Corrupt Organizations Act, 18 U.S.C. 1961 *et seq.*, does not contain any discussion of whether the intent of Congress was to make of the exclusive jurisdiction of federal courts the cases arising under said legislation or whether the jurisdiction should be concurrent with state courts. As far as your petitioner has been able to determine, to the present, there are no cases in which this question has been decided.

The purpose of the statute is to completely erradicate fraud and dishonesty in business, without exception. Its principal objective is to totally eliminate illegal and prohibited activities and, to reach this goal, the statute threatens the offenders with, among others, economic

ruin and, at the same time, looks after the victims so that they may be indemnified for their losses.

RICO is a statute of remedial nature which helps the states in their fight to prevent the infiltration of criminal activities into business and the reparation of its victims. The intention of providing federal assistance and cooperation to the states in their fight against the problems created by organized crime clearly establishes an existing compatibility between the state jurisdiction and the federal interests.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and the order denying the motion for rehearing of the Supreme Court of the Commonwealth of Puerto Rico.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alberto Santiago Villalonga, an attorney for petitioner and a member of the forum of this Court, certify that on this 1st day of September, 1983, copy of the foregoing Petition for a Writ of Certiorari to the Supreme Court of the Commonwealth of Puerto Rico was served, by certified mail, return receipt requested, upon Respondent, through its counsel, Messrs. Saldana, Moron & Rey, P.O. Box 13954, Santurce, Puerto Rico 00908; and to Jorge L. Izquierdo, Esq., G.P.O. Box 5032, San Juan, Puerto Rico 00936; and Leonardo Andrade, Esq., Goldman & Antonetti, P.O. Box 13486, Santurce, Puerto Rico 00908.

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APPENDIX A

IN THE SUPREME COURT OF PUERTO RICO

NO. 0-82-96

PUERTO RICO ELECTRIC POWER AUTHORITY,
Plaintiff-Respondent,

v.

GENERAL ELECTRIC COMPANY,
Defendant-Petitioner.

CERTIORARI

JUDGMENT

San Juan, Puerto Rico, May 4, 1983

The Puerto Rico Electric Power Authority brought an action against petitioner, General Electric Company, for breach of the contract related to the design and construction of a combined cycle elctricity generating plant. In the complaint, PREPA also claimed treble damages, because, as it alleges, General Electric fraudulently procured the execution of the contract by bribing an officer of the Authority. This treble-damage action is based on the provisions of sec. 4(c) of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. sec. 1964(c) (RICO).

Appellant, General Electric Co., raised before the lower court the lack of jurisdiction defense based on that federal courts have exclusive jurisdiction over treble damage actions brought under RICO. The trial court denied the dismissal since it understands that it was not the intention of Congress to exclude state courts from jurisdiction over this type of actions.

General Electric seeks herein the reversal of the lower court's resolution because it deems that federal courts have exclusive jurisdiction.

We need not resolve whether local courts have concurrent jurisdiction with federal courts to entertain civil actions for treble damages under RICO. *CF. Gulf Offshore Co.* v. *Mobil Oil Corp.*, 483 U.S. 473 (1982); 69 L. Ed. 2d 1136 (1982); *Hathorn* v. *Lovorn*, ___ U.S. ___ (1982). Even when state courts may have concurrent jurisdiction, they can decline to pass upon claims under federal statutes if they have a valid excuse which does not discriminate against the application of federal laws. *Missouri Ex rel. S. Ry.* v. *Mayfield*, 340 U.S. 1 (1950), *Testa* v. *Katt*, 330 U.S. 386 (1947); *McKnett* v. *St. Louis & S.F. Ry.*, 292 U.S. 230 (1934); *Douglas* v. *New York, N.H. & H.R.R.*, 279 U.S. 377 (1929); *Mondou* v. *New York, N.H. & H.R.R.*, 233 U.S. 1 (1912); 1 J. Moore, W. Taggart & J. Wicker, 1 *Moore's Federal Practice*, secs. 0.6(3) (p. 237), .201 (p. 2015), 204 (pp. 2203-04) (1981); Wright and Miller, 16 *Federal Practice and Procedure*, sec. 4024 (p. 718) (1982); Redish and Muench, "*Adjudication of Federal Causes of Action in State Courts*," 75 Mich. L. Rev. 311, 340-361 (1976). See also *Martinez* v. *California*, 444 U.S. 277, 284, n.7 (1980).

Assuming, *in arguendo*, that state courts have concurrent jurisdiction with federal courts in civil actions under RICO, the particular facts of this case convince us that the lower court should dismiss the causes of action. We do not consider it necessary to resolve the controversy with regard to our jurisdiction when the appellee itself filed an identical claim before the federal forum, which, according to what was informed at the hearing held before this Court last April 18, is in a procedural stage more advanced than the instant case. *Barnett* v. *Baltimore & Ohio Railway*, 200 N.E.2d 473 (1963). Moreover, in the federal forum the parties have the constitutional benefit safeguarded by the Seventh Amendment of the Constitution of the United States of having a trial by jury in civil cases, including actions under RICO. *N.S.C. Intl. Corp.* v. *Ryan*, 531 F. Supp. 362 (1981); *Curtis* v. *Loether*, 415 U.S. 189 (1974); *cf. Dice* v. *Akron C. & Y.R.R.*, 342 U.S. 359 (1952). As it is known, said benefit is not available in our forum. *Garcia*

Mercado v. *Superior Court*, 99 P.R.R. 287 (1970).[1] In *García Mercado*, we advised: "that when insisting on holding a *civil* suit before a jury the Supreme Court of the United States has stated several times that the trial by jury in civil cases is a fundamental feature in the system of *federal* jurisprudence."

The aforesaid circumstances constitute reasonable grounds to decline to make a pronouncement on such an interesting and complex matter like the one herein raised. Consequently, judgment is rendered reversing the resolution appealed from and the lower court is ordered to dismiss the cause of action under RICO. The case is remanded for further proceedings.

It was so agreed and ordered by the Court and certified by the Clerk. Mr. Chief Justice Trias Monge took no part in this decision.

/s/ (Sgd.) Lady Alfonso de Cumpiano
LADY ALFONSO DE CUMPIANO
Chief Clerk

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[1] It appears from the record that appellant has applied for and obtained trial by jury in the United States District Court for the District of Puerto Rico.

APPENDIX B

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

CIVIL NO.: 81-1111 (908)

PUERTO RICO ELECTRIC POWER AUTHORITY,
Plaintiff

v.

GENERAL ELECTRIC COMPANY; TWOMBLY, INC.; KETTY GARCIA ARGUETA; ANA EVELYN VELAZQUEZ GARCIA; and CARLOS VELAZQUEZ GARCIA
Defendants

RE:

BREACH OF CONTRACT
AND DAMAGES

RESOLUTION

Codefendant General Electric Company has requested from this Court to dismiss this action based on lack of jurisdiction over the subject matter. Said party alleges that this Court lacks jurisdiction over the cause of action brought by the Electric Power Authority, hereinafter PREPA, pursuant to the provisions of the "Racketeer Influenced and Corrupt Organizations Act," 18 U.S.C., Sec. 1961 *et seq.* It sustains that federal courts have exclusive jurisdiction over said cause of action.

The statute in question is the "Racketeer Influenced and Corrupt Organizations Act," known as "RICO," which statute was enacted as part of the 1970 "Organized Crime Control Act," the purpose of which was to combat organized crime and to rid American economy and the channels of interstate commerce from influences of organized crime. Said legislation pro-

hibits certain behavior, such as syndicated gambling and racketeering. See *U.S.* v. *Vignola*, D.C. Pa. 1979, 464 F. Supp. 1091, affirmed 605 F2d 1199.

Section 1964 of RICO, 18 U.S.C.A. 1964, establishes that any person injured in his business or property by reason of a violation of section 1962 may recover treble damages, costs and attorney's fees.[1]

Precisely, on this section is that plaintiff bases its treble-damage action alleged in paragraphs 16, 17 and 18 of the amended complaint.

The United States Congress, in the exercise of its legislative power, has the discretion of determining which courts shall be granted jurisdiction over the legislation by it enacted. Congress can grant jurisdiction either by an express or an implicit provision. If Congress has not granted jurisdiction in an express manner, like in the instant case, it shall be then determined whether it has been implicitly granted.

The presumption of concurrent jurisdiction of federal courts with state courts exists in those cases arising under federal law. See: Wright, Miller & Cooper, *Federal Practice and Procedure*, Sec. 3527, p. 124.

> "Concurrent jurisdiction has been a common phenomenon in our judicial history and exclusive federal court jurisdiction over cases arising under federal law has been the exception rather than the rule." *Dowd Box* v. *Courtney*, 368 U.S. 502, 82 S. Ct. 519, 7 L Ed. 483 (1962).

Certainly, the language of section 1964(c) of title 18 U.S.C.A.(c) does not expressly grant exclusive federal court jurisdiction, inasmuch as its language is ambiguous when stat-

---

[1] 18 USCA 1964(c): "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States District Court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee."

ing " . . . may sue therefor in any appropriate United States District Court . . ."

Not having been expressly granted exclusive federal court jurisdiction, we shall proceed to consider whether Congress implicitly granted said exclusive jurisdiction.

As regards the language "may sue" used in the statute, we find that it is an established interpretation rule that the words shall be given the ordinary meaning in the absence of persuading reasons to the contrary. *Burns* v. *Alcala*, 45 L ed. 469; *Banks* v. *Chicago Grain Trimmers*, 390 U.S. 459, 465, 20 L ed. 30, 88 S. Ct. 1140 (1968); *Minor* v. *Mechanics Bank of Alexandria*, 1 Pet. 46, 64 y L ed. 47 (1828).

By way of analogy, we have studied federal statutes which have used similar language and the interpretation given thereto by the U.S. Supreme Court. Let us see.

The 1947 Labor Management Relations Act (29 U.S.C. Sec. 185(a)), which in its pertinent part reads: ". . . may be brought in any district court of the United States . . ." was interpreted in the case of *Dowd Box Co.* v. *Courtney*, supra, in the sense that said language did not exclude state court jurisdiction. The U.S. Supreme Court held that the use of the word "may" was not sufficient to grant exclusive jurisdiction and that concurrent jurisdiction did exist. The Court stated in that respect:

> "It has not been argued, nor could it be, that § 301(a) speaks in terms of exclusivity of federal court jurisdiction over controversies within the statute's purview. On its face § 301(a) simply gives the federal district courts jurisdiction over suits for violation of certain specified types of contracts."
>
> The statute does not state nor even suggest that such jurisdiction shall be exclusive. It provides that suits of the kind described "may" be brought in the federal district courts, not that they must be." (368 U.S. 502, at 506; 7 L ed. 2d 483, at 406).

Likewise, when interpreting the Petroleum Marketing Practices Act, known as "PMPA," 15 U.S.C. 2801 *et seq.*, the

Court held that the use of the language "may" granted concurrent jurisdiction to state and federal courts. In the case of *Ted's Tire Services, Inc.* v. *Chevron U.S.A., Inc.*, 470 F.Supp. 163 (D. Conn. 1979, the court stated that:

> " . . . It is true, as the defendant argues, that the removal jurisdiction of the federal courts is derivative in nature. 1A Moore's Federal Practice, 0.157[3], at 46-47 (2d ed. 1974). As a consequence, the Supreme Court has held that 'if the state court lacks jurisdiction of the subject matter or of the parties, the federal court acquires none, although it might in a like suit originally brought there have had jurisdiction. 'Lambert Run Coal Co. v. Baltimore & Ohio R. Co., 258 U.S. 377, 382, 42 S. Ct. 349, 351, 66 L Ed. 671 (1922). However, there is nothing in the PMPA which suggest that the Connecticut Superior Court would not have had jurisdiction over a complaint brought under PMPA. The Act stipulates that a civil action to redress a violation of the statute 'may be brought' in a federal district court; it does not state that such an action must be instituted in federal court. 15 U.S.C. § 2805(a) (emphasis supplied). It has been long established that, absent any indication that the federal courts have exclusive jurisdiction over a particular subject, federal laws may be enforced in either the state or federal courts. Claflin v. Houseman, 93 U.S. 130, 137, 23 L. ed. 833 (1876); Testa v. Katt, 330 U.S. 386, 390-91, 67 S. Ct. 810, 91 L. Ed. 967 (1947)."

Even though in the United States the RICO jurisdictional question has not been resolved by the courts, the interpretation to be given to the word "may" used in Section 1965[*] of said Act on "venue and process" has already been resolved. In *Farmer's Bank of State of Delaware* v. *Bem Mortgage Corp.*, 452 F. Supp. 1278, at pages 1280 and 1281, the Court states:

> "However, the venue provisions of Section 1965 are not necessarily exclusive. The language of that provision

---

[*] 18 USC 1965, provides: "a) Any civil action or proceeding under section 1964 of this chapter against any person *may* be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs." (underscore supplied).

merely says that an action 'may' be brought in that district. The legislative history of Section 1965 reveals that it was patterned after the venue provisions of the antitrust laws. See King v. Vesco, 342 F. Supp. 120 (N.D. Cal, 1972). Under the antitrust laws, it has been held in this and other circuits that the general venue provisions of 28 U.S.C. 1391, et seq. are meant to supplement the antitrust venue provisions of 15 U.S.C. s 15,22. T-M Parts Inc. v. The Charles Machine Works, Inc., C.A. 74-174 (D. Del. Dec. 29, 1976); State of New York v. Morton Salt Co., 266 F. Supp. 570 (E.D.pa.), affirmed 385 F. 2d. 122 (3rd Cir. 1967), cert. denied, 390 U.S. 995, 88 S. Ct. 1195, 20 L. Ed. 2d 94 (1968); School District of Philadelphia v. Harper & Row Publishers, Inc. 267 F. Supp. 1006 (E.D. Pa. 1967); Adams Dairy Co. v. National Dairy Co. 293 F. Supp. 1135 (E.D. Pa. 1968) Philadelphia Housing Authority v. American Radiator, 291 F. Supp. 252 (E.D. Pa. 1968) See also Board of County Commissioners v. Wilshire Oil Co. 523 F. 2d 125 (10th Cir. 1975); Alber Levine Associates v. Berton & Cotti, 314 F. Supp. 169 (S.D.N.Y. 1970); 1 Moore's Federal Practice (1977 Ed.) 0.1444 [14-15] Cf. Pure Oil Co. v. Suarez, 384 U.S. 202, 86 S. Ct. 1394, 16 L. Ed. 2d 474 (1966) (general venue provisions supplement venue provisions of Jones Act). Given the language and legislative history of section 1965, *I conclude that its provisions were not intended to be exclusive, but rather, were intended to liberalize the already existent venue provisions found in Title 28.*" (Underscore supplied).

In the Memorandum in support of its lack of jurisdiction defense, defendant alleges that, being the RICO language similar to that of the antitrust laws and the latter having received a restrictive interpretation as regards jurisdiction, likewise, under RICO, jurisdiction shall be restrictive. Let us see:

Section 4 of the Clayton Act (15 U.S.C. 15), provides:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy and shall recover threefold the damages by

him sustained, and the cost of suit, including reasonable attorneys fees." (Underscore supplied).

Certainly, the language used in said legislation is very similar to that of RICO.

The only consideration that we shall analyze in determining whether Congress' intent was to grant exclusive federal court jurisdiction is whether the legislative history makes any indication to that respect.

From the study made of the legislative history, we can infer that, actually, RICO was modeled by the U.S. Congress upon the antitrust laws and that the latter's language greatly resembles that of RICO, as we have hereinbefore set forth.

Even though, as it is stated by defendant in its memorandum, the treble-damage provision of the Clayton Act is incorporated into and supported by RICO, we understand that the commentaries made in connection therewith are addressed to the treble-damage concept and to the incorporation of said provision. Nothing is found in said legislative history specifically considering the point that federal court shall have exclusive jurisdiction. The jurisdiction matter is not discussed therein. There is just mentioned that federal courts are authorized to entertain jurisdiction over civil actions[1] for violations to the statute, but nothing is stated on the exclusive jurisdiction matter.

We cannot conclude from the legislative history that the U.S. Congress' intent has been to exclude state-court jurisdiction in cases arising under RICO.

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[1] 1970 U.S. Code Congressional and Administrative News p. 4010: "District Courts are authorized to prevent and restrain by civil process violations of the above standard by, among other things, the issuance of (1) orders of divestment; (2) prohibition of business activity; and (3) order of dissolution or reorganization."

"6 Cong. Rec.-House, p. 35295, Representative Paff . . . private persons injured by reason of a violation . . . may recover treble damages in federal court . . ."

There is brought to our attention the question of why did the Court construe that, under the Clayton Act, the use of the language "may" grants exclusive federal court jurisdiction when the general rule has been to interpret similar language in other legislations as granting federal courts concurrent jurisdiction with state courts.

We understand that Congress seeked uniformity in the application of the antitrust legislation. The doctrine of exclusiveness that covers the antitrust laws arises from the exclusiveness of actions to enforce said legislation. See: *Minnesota* v. *Northern Securities Co.*, 194 U.S. 48, 71, 48 L.Ed. 870, 881, 24 S. Ct. Rep. 598; *D. R. Wilder Mfg. Co.*, 236 U.S. 165, 174, 59 L. Ed. 520, 525, 35 S. Ct. Rep. 398 Ann. Cas. 1916 A, 118; *Faure Lumber Co.* v. *Neal*, 244 U.S. 459, 471, 61 L. Ed., 1256, 1264, 37 S. Ct. Rep. 718; *Geddes* v. *Anaconde Copper Min. Co.*, 254 U.S. 590, 593, 65 L. Ed. 475, 429, 41 S. Ct. Rep. 209.

We cannot conclude, as defendant does in its memorandum, that, due to the fact that the language used in RICO is similar to the language used in the Clayton Act and having been determined that, under the Clayton Act, federal courts have exclusive jurisdiction, it should necessarily be likewise under RICO. As we have hereinbefore stated, nothing has been found in the legislative history of RICO from which we may infer that this has been the legislative intent.

The general principle is that state courts have jurisdiction over cases arising from federal laws.[4] On the other hand, nothing is found in the language, structure or legislative history, or in law policy, from which we may infer the exclusive federal court jurisdiction.

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[4] "As a general principle, state courts may assume subject matter jurisdiction over a federal cause of action absent provision by Congress to the contrary or disabling incompatability between the federal claim and state court adjudication." *Gulf Offshore Comp.* v. *Mobil Oil Corp.* (69 L. Ed. 2d 784).

Based on the foregoing grounds, the motion to dismiss is denied.

San Juan, Puerto Rico, January 15, 1982.

/s/ (Sgd.) Salvador Acevedo Colon
SALVADOR ACEVEDO COLON
Superior Judge

Served with copy of the preceding Resolution:

Francisco Ponsa Feliu, Esq., G.P.O. Box 4423
San Juan, Puerto Rico 00936

Lino J. Saldana, Esq. P.O. Box 13954
Santurce, Puerto Rico 00908

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Suite 1001, Stop 23
Santurce, Puerto Rico 00909

Alex Gonzalez, Esq., G.P.O. Box 6123, San Juan
San Juan, Puerto Rico 00936

By: (Sgd.) Maria del C. Suarez
Deputy Clerk
January 19, 1982

- - - (overleaf) - - -

(Seal of the
Superior Court,
San Juan Part)

CERTIFICATE

I CERTIFY that this is a true and exact copy of the original which appears of record, and at the request of _____ _____ I issue these presents

[X] upon payment of fees

[ ] for official use, free of charge

/s/ By DORIS MORALES
Clerk

August 18, 1983

/s/ By (Illegible)
Deputy Clerk

. Fourt internal revenue stamps affixed and cancelled:

A3841639 — $3.00
A6336049 — 50c
A1619694 — 10c
A1619689 — 10c

APPENDIX C

IN THE SUPREME COURT OF PUERTO RICO

NO. 0-82-96

PUERTO RICO ELECTRIC POWER AUTHORITY,
Plaintiff-Respondent,

vs.

GENERAL ELECTRIC COMPANY,
Defendant-Petitioner.

CERTIORARI

RESOLUTION

San Juan, Puerto Rico, June 3, 1983

The Motion for Reconsideration, is denied.

it was so agreed by the Court and certified by the Clerk. Mr. Chief Justice Trias Monge took no part in the decision.

/s/ (Sgd.)
LADY ALFONSO DE CUMPIANO
Chief Clerk

APPENDIX D

BEFORE THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

CIVIL NO. 81-1111
(908)

PUERTO RICO ELECTRIC POWER AUTHORITY;
Plaintiff

v.

GENERAL ELECTRIC COMPANY; TWOMBLY, INC.; KETTY GARCIA-ARGUETA; ANA EVELYN VELAZQUEZ-GARCIA and CARLOS VELAZQUEZ GARCIA;
Defendants.

FOR:

NONPERFORMANCE OF CONTRACT AND DAMAGES

COMPLAINT

TO THE HONORABLE COURT:

Now comes the plaintiff, Puerto Rico Electric Power Authority, and respectfully states and prays:

1. The Puerto Rico Electric Power Authority, previously Water Resources Authority of Puerto Rico (hereinafter referred to as PREPA), is a public corporation of the Commonwealth of Puerto Rico, empowered to sue and to be sued before the courts of Puerto Rico.

2. Defendant General Electric Company (hereinafter referred to a GE) is a corporation organized under the laws of the State of New York.

3. Defendant Twombly, Inc. is a corporation organized under the laws of the State of New Jersey, and acted as subcontractor of defendant GE in relation to the contract object of this complaint.

4. Defendant Ketty Garcia-Argueta is the widow of Carlos Velazquez-Toro; codefendants Ana Evelyn Velazquez-Garcia and Carlos Velazquez-Garcia are the daughter and son of said Carlos Velazquez-Toro and said three defendants are the sole and universal heirs of said Carlos Velazquez-Toro, who passed away in San Juan, Puerto Rico, on December 19, 1975.

5. On or about March 15, 1974, plaintiff General Electric Power Authority (PREPA) and defendant GE executed and subscribed a contract (herein referred to as "the contract") according to which the latter agreed to design and construct a combined cycle plant to generate electricity, which under the terms of the contract so executed were to be reliable and efficient and to generate certain minimum amounts of electric energy at predetermined levels of efficiency to fulfill the requirements necessary for plaintiff's functions.

6. The execution and performance of the contract object of this complaint are matters bearing great public interest because PREPA was and still is during all dates referred to in this complaint, the entity liable and empowered by law to carry out the public purpose of producing and supplying electric energy to the whole Island of Puerto Rico, for all public and private purposes.

7. The contract executed between the parties on March 15, 1974 was the result of bidding procedures in which defendant GE participated.

8. Defendant GE has breached the contract among other reasons because it has not provided plaintiff with an electric energy generating plant which comply with the capacity and efficiency requirements agreed upon in the contract; and contrary has designed, constructed, sold and delivered to plaintiff a deficient and unreliable plant that does not meet said requirements due to fault and deficiencies and the design and/or manufacture and/or construction of said electric energy plant, all of which constitute a violation and nonperformance of the contract executed between the parties.

9. The parties herein have tried to correct the defects found and that have appeared in the electric energy generating plant and to bring the plant to an operational condition according to the purpose or intention of the contract, but said efforts, even though still being made, have been unsuccessful.

10. Plaintiff requires that defendant GE comply with all its obligations under said contract and that it indemnify and compensate plaintiff for the damages resulting from its nonperformance, which plaintiff has suffered and continues to suffer and shall suffer in the future, which are estimated in a sum not less than $168,000,000.00, plus interest.

11. In addition, defendant GE did not fulfill and fraudulently violated its obligations under Clause 19 of the contract because it caused and motivated Carlos Velazquez-Toro into participating in the contract and in its benefits or part thereof, all of which was unknown to PREPA, being said Carlos Velazquez-Toro an officer of PREPA before and on the dates of the contract execution and of the bid.

12. The fraudulent violation of the contract by defendant GE as aforestated, resulted in damages to PREPA, including a sum of not less than $1,250,000.00 paid as a bribe to Carlos Velazquez-Toro, plus $20,000,000.00 paid to GE in excess of the sum that PREPA would have paid according to a bidding proposal submitted by another bidder, and which was not accepted as a result of the violation of the contract and fraudulent conduct of defendant GE in addition to the damages claimed for not less than $168,000,000.00 resulting from the nonperformance of its obligation.

13. Codefendants GE and Twombly, Inc. conspired between themselves and with other persons, including said Carlos Velazquez-Toro, and as a result of said scheme they illegally appropriated themselves of monies belonging to PREPA with which the bribe of Velazquez-Toro was paid in an amount not less than $1,250,000.00 in violation of the laws of the Commonwealth of Puerto Rico and of the United States of America.

14. Said conduct of the defendants and Carlos Velazquez-Toro caused plaintiff the damages described in the above paragraphs and for the sum stated therein.

15. Said conduct grants plaintiff the right to be joint and severally compensated for said damages by codefendants GE and Twombly, Inc., defendants Ketty Garcia-Argueta, Ana Evelyn Velazquez-Garcia and Carlos Velazquez-Garcia are equally liable for plaintiff's claims alleged herein.

16. Defendants GE and Twombly, Inc., together with Carlos Velazquez-Toro and other persons, carried out various criminal acts which constitute a pattern of racketeering activity, said criminal acts being in violation of the laws of the Commonwealth of Puerto Rico and of the United States of America, specially because they conspired and acted in Puerto Rico to defraud the plaintiff and cause damage to plaintiff in its business and property; for the purpose of offering a bribe in Puerto Rico to Carlos Velazquez-Toro, an officer for plaintiff; to pay said bribe in Puerto Rico; to fraudulently seek and carry out a plan to defraud plaintiff in Puerto Rico; all of these in violation of the federal laws and the laws of the Commonwealth of Puerto Rico.

17. The conduct of Twombly, Inc., GE and Carlos Velazquez-Toro, described in the above paragraph, contitutes a violation of 18 U.S.C.A. sec. 1962, which has caused damages to plaintiff in its business and property in Puerto Rico, and which damages plaintiff is still suffering and shall continue to suffer in the future, in a sum of not less than $189,000,000.00.

18. Plaintiff has the right under 19 U.S.C.A. sec. 1964(c) to receive threefold the damages suffered by it, plus costs and attorneys' fees.

WHEREFORE, plaintiff PREPA prays that judgment be entered in its favor, sentencing the defendants to pay the amounts stated in this complaint.

San Juan, Puerto Rico, March 10, 1981.

FRANCISCO PONSA FELIU
FRANCISCO PONSA FLORES
EDDA PONSA FLORES
LAWRENCE E. DUFFY
G.P.O. Box 4423
San Juan, Puerto Rico 00936

JOSE F. IRIZARRY GONZALEZ
Legal Adviser
Puerto Rico Electric Power
Authority

By: F. Ponsa Feliu
F. PONSA FELIU
(Signed)

APPENDIX E

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

CIVIL NO. 81-1111
(908)

PUERTO RICO ELECTRIC POWER AUTHORITY:
Plaintiff;

v.

GENERAL ELECTRIC COMPANY; *et al;*
Defendants

FOR:

NONPERFORMANCE OF
CONTRACT AND DAMAGES

AMENDED COMPLAINT

TO THE HONORABLE COURT:

Now comes plaintiff, through its undersigned attorneys, and respectfully states and prays:

1. All the allegations contained in paragraphs 1 to 18 of the original complaint are realleged herein.

2. It is added after paragraph 15 of the original complaint the following paragraph, enumerated 15A:

> 15A. Defendant General Electric also deceitfully failed to comply with its obligations contracted under Article 17 of the aforementioned contract, nonperformance of which raises the concession of the remedies accorded in that Article.

WHEREFORE, it is respectfully requested that the complaint be granted, granting plaintiff the remedies provided by law.

The undersigned attorney hereby certify: That he has sent copy of the Amended Complaint to Rafael Escalera Rodriguez, Esq., Box 13954, Santurce, Puerto Rico 00908.

San Juan, Puerto Rico, May 7, 1981.

FRANCISCO PONSA FELIU
FRANCISCO PONSA FLORES
EDDA PONSA FLORES
LAWRENCE E. DUFFY
P.O. Box 4423
San Juan, Puerto Rico 00936

By: Francisco Ponsa-Feliu
FRANCISCO PONSA-FELIU
(Signed)

APPENDIX F

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

CIVIL NO. 81-1111 (908)

PUERTO RICO ELECTRIC POWER AUTHORITY;
Plaintiff

v.

GENERAL ELECTRIC COMPANY and others
Defendant

Re:

BREACH OF CONTRACT AND
DAMAGES

ANSWER OF GENERAL ELECTRIC COMPANY

TO THE HONORABLE COURT:

Comes now defendant, General Electric Company (General Electric), represented by its undersigned attorneys, and in answer to the amended complaint filed in this case, very respectfully alleges and prays:

1. General Electic admits the allegations contained in paragraph 1 of the amended complaint.

2. General Electric admits the allegations contained in paragraph 2 of the amended complaint.

3. General Electric lacks sufficient information or knowlege to form a judgment or opinion as to the veracity of the allegations contained in paragraph 3 of the amended complaint, except that General Electric admits that Twombly, Inc. acted as subcontractor in relation to the construction and installation of the Aguirre combined cycle type plants.

4. General Electric lacks sufficient information or knowledge to form a belief or opinion as to the veracity of the allegations contained in paragraph 4 of the amended complaint.

5. General Electric admits, in answer to paragraph 5 of the amended complaint, that plaintiff and General Electric subscribed an agreement dated March 15, 1974 in relation to the Aguirre combined cycle type plants, but alleges that said agreement does not constitute the complete and entire contract executed and subscribed between the parties. Consequently, to the extent that the allegations contained in paragraph 5 of the amended complaint imply that the agreement of March 15, 1974 constitutes the complete and entire contract executed and subscribed between the parties, General Electric denies them. General Electric further alleges that the contractual documents speak by themselves and that — to the extent that the allegations of paragraph 5 intend to describe the substance of the contract executed between the parties — they are inconsistent with said contractual documents or contrary to them, General Electric denies such allegations.

6. General Electric neither admits nor denies the allegations contained in paragraph 6 of the amended complaint to the effect that "The execution and performance of the contract object of this complaint are matters bearing great public interest because PREPA was and still is, during all dates referred to in this complaint, the entity liable and empowered by law to carry out the public purpose of producing and supplying electric energy for the whole Island of Puerto Rico, for all public and private purposes." Said allegations are argumentative, they constitute conclusions of law and not conclusions of fact. Consequently, General Electric is not bound to answer them and it corresponds to plaintiff to prove them.

7. In answer to the allegations contained in paragraph 7 of the amended complaint to the effect that "The contract executed between the parties on March 15, 1974 was the result of bidding procedures in which defendant GE participated," General Electric alleges that, to the best of its information, knowledge and belief, the contract entered into between General Electric and plaintiff, which, in part, consists of the agreement subscribed on March 15, 1974, was the result of the (a) invitation sent by plaintiff to General Electric to submit a

proposal; (b) proposals submitted by General Electric to plaintiff; and (c) negotiations carried out between plaintiff and General Electric; and that similar or identical invitations to submit proposals were sent to to other sellers; and that said sellers, or some of them, submitted proposals to plaintiff. To the extent that the allegations contained in paragraph 7 of the amended complaint are inconsistent with General Electric's understanding of the facts, or to the extent that they are contrary to said understanding expressed hereinbefore, General Electric denies said allegations.

8. In answer to paragraph 8 of the amended complaint, General Electric denies each and every allegation contained therein. Further, in answer to said allegations, General Electric alleges (a) that it completely complied with each and every term, condition and provision contained in the contract related to the Aguirre combined cycle type plants; (b) that it complied in an adequate manner and in good faith with each and every obligation imposed thereto said contract; (c) that each one of the Aguirre combined cycle type plants, as well as each component or element thereof, at the time that General Electric made delivery thereof to plaintiff and the latter accepted them, complied with all plaintiff's requirements and specifications, with General Electric's proposals and with the contract executed between the parties; (d) that on said date, all the equipments had met with success the pertinent functioning tests performed and they had complied with the relevant standards as to functioning required by the contract between plaintiff and General Electric; and (e) that each combined cycle plant in its entirety, as well as each one of their components and elements, had been inspected and accepted by plaintiff.

9. General Electric denies each and every allegation contained in paragraph 9 of the amended complaint and, specifically, denies the existence of any defect in the Aguirre combined cycle type plants. In addition, General Electric alleges that on various occasions after acceptance by plaintiff of said plants, General Electric has offered and assisted plaintiff in mitigating problems which have arisen and which are exclusively due to

the fault or refusal on the part of plaintiff to adequately maintain and operate said plants or their components and elements, and to the misuse and substantial and prejudicial alterations of said plants of the part of plaintiff.

10. General Electric denies each and every allegation contained in paragraph 10 of the amended complaint and specifically denies that plaintiff has suffered any damage as a result of General Electric's acts or omissions related to the contract executed between plaintiff and General Electric, and it incorporates, by reference, its answers to paragraphs 8 and 9 of the amended complaint.

11. General Electric denies each and every allegation contained in paragraph 11 of the amended complaint, except that it admits that, to the best of its information, knowledge and belief, Carlos Velazquez-Toro was an employee of plaintiff at the time in which General Electric submitted to plaintiff its intial proposal and when the agreement dated March 15, 1974 was subscribed, although General Electric denies that said agreement constitutes the complete and entire contract executed between plaintiff and General Electric.

12. General Electric denies each and every allegation contained in paragraph 12 of the amended complaint. In addition, General Electric alleges that its proposal was duly evaluated and it resulted to be the lowest and the best of all the proposals received by plaintiff; that the alleged bribery, even assuming that it was paid (which is denied by General Electric), did not constitute a factor in the adjudication of the contract to General Electric; and that, consequently, said alleged bribery, even assuming that it was paid (which is denied by General Electric), could not have caused any damage to plaintiff. Further, specifically answering the allegation that plaintiff has suffered damages in an amout of "not less than $168,000,000.00," General Electric incorporates, by reference, its answers to paragraphs 8, 9, and 10 of the amended complaint.

13. General Electric denies each and every allegation contained in paragraph 13 of the amended complaint to the extent that they may refer to General Electric.

14. General Electric denies each and every allegation contained in paragraph 14 of the amended complaint to the extent that they may refer to General Electric and, in addition, it incorporates, by reference, its answers to paragraphs 8, 9, 10, and 12 of the amended complaint.

15. General Electric denies each and every allegation contained in paragraph 15 of the amended complaint to the extent that they may refer to General Electric and specifically denies plaintiff having suffered any damage as a result of any act or omission on the part of General Electric.

15A. General Electric denies each and every allegation contained in paragraph 15A of the amended complaint.

16. General Electric denies each and every allegation contained in paragraph 16 of the amended complaint to the extent that they may refer to General Electric.

17. General Electric denies each and every allegation contained in paragraph 17 of the amended complaint to the extent that they may refer to General Electric and specifically denies that plaintiff has suffered any damage as a result of any act or omission on the part of General Electric. In addition, as part of its answer to paragraph 17, General Electric incorporates, by reference, its answers to paragraphs 8, 9, 10, and 12 of the amended complaint.

18. General Electric accepts that 18 U.S.C.A. Sec. 1964(c) creates a private cause of action for treble damages, but denies that said statute allows plaintiff to recover any damage against General Electric and it further denies that plaintiff has the right to recover any damage against General Electric pursuant to any other law or legal principle.

FIRST AFFIRMATIVE DEFENSE

1. Paragraphs 5-10 of the amended complaint intend to adduce a cause of action for breach of the of the contract executed between the parties related to the Aguirre combined cycle plants.

2. Addendum "C" attached to and forming part of the proposal submitted by General Electric to plaintiff, dated September 14, 1973, provides in the clause entitled "Warranties" which are the exclusive remedies in the event of defects in the plants or in any of their components or elements. Said Addendum "C" was made to specifically form part of the contract executed between the parties by virtue of the agreement subscribed on March 15, 1974.

3. All time periods of said warranties related to the plants and their components and elements have expired or lapsed and there is not pending any plaintiff's claim under said warranties.

4. Consequently, by virtue of what is specifically provided in the contract executed between the parties, plaintiff is not entitled to claim for the violations of the contract which are alleged in paragraphs 5-10 of the amended complaint.

SECOND AFFIRMATIVE DEFENSE

1. Paragraphs 5-10 of the amended complaint intend to adduce a cause of action for breach of the contract executed between the parties related to the Aguirre combined cycle plants.

2. "Addendum C" attached to and forming part of the proposal submitted by General Electric to plaintiff, dated September 14, 1973, provides in its clause entitled "Limitation of Liabilities and Insurance" that General Electric entire liability arising out or in any manner related to the contract executed between the parties "whether in contract, tort (including negligence) or otherwise, will not exceed the price of the respective gas turbine generating plant or the combined cycle plant which gives rise to the claim." The aforesaid "Addendum C" was

made to specifically form part of the contract executed between the parties by virtue of the agreement subscribed on March 15, 1974.

3. Consequently, by virtue of what is specifically provided in the contract executed between the parties, plaintiff is not entitled to claim, for the breaches of the contract referred to in paragraphs 5-10 of the amended complaint, damages exceeding the price of the Aguirre combined cycle plants.

THIRD AFFIRMATIVE DEFENSE

1. Paragraphs 5-10 of the amended complaint intend to adduce a cause of action for breach of the contract executed between the parties relative to the Aguirre combined cycle plants.

2. Addendum "C" attached to and forming part of the proposal submitted by General Electric to plaintiff, dated September 14, 1973, provides in its clause entitled "Limitation of Liabilities and Insurance" that General Electric's is not liable "in any event for any special or consequential damages." The aforesaid "Addendum C" was made to specifically form part of the contract executed between the parties by virtue of the agreement subscribed on March 15, 1974.

3. Consequently, by virtue of what is specifically provided in the contract executed between the parties, plaintiff is not entitled to claim special or consequential damages for the breaches of the contract referred to in paragraphs 5-10 of the amended complaint.

FOURTH AFFMIRMATIVE DEFENSE

1. Paragraphs 5-10 of the amended complaint intend to adduce a cause of action for breach of the contract executed between the parties relative to the Aguirre combined cycle plants.

2. General Electric wholly complied with each and every term, condition and provision contained in said contract.

3. General Electric complied in an adequate manner and in good faith with each and every obligation under said contract.

4. Each one of the Aguirre combined cycle plants, as well as each of their components and elements, at the time that they were delivered and accepted by plaintiff, completely complied with plaintiff's specifications, with General Electric's proposals and with the contract executed between plaintiff and General Electric.

5. At said time, all the equipments included in the contract executed between the parties had met with success the pertinent functioning tests and complied with or were over the functioning standards specified in the contract executed between plaintiff and General Electric.

6. Each one of said combined cycle plants, as well as each one of their components or elements, was completely inspected, verified, approved and finally and definitively received by plaintiff.

7. Said final definitive receipt releases General Electric of all liability towards plaintiff and prevents the latter to claim for the alleged breaches of the contract referred to in paragraphs 5-10 of the amended complaint.

FIFTH AFFIRMATIVE DEFENSE

1. Paragraphs 5-10 of the amended complaint intend to adduce a cause of action for breach of the contract executed between the parties relative to the Aguirre combined cycle plants.

2-6. General Electric reiterates paragraphs 2-6, inclusive, of its Fourth Affirmative Defense, and incorporates them, by reference, herein as paragraphs 2-6, inclusive, of this Fifth Affirmative Defense.

7. In 1978, plaintiff and General Electric reached a final agreement by way of accord and satisfaction, by which General Electric agreed to waive the collection of certain sums of money that plaintiff owed to it under the contract relative to

the Aguirre combined cycle plants in exchange and in consideration for plaintiff's agreement to waive, on its part, certain alleged claims against General Electric which arose from the execution of said contract by General Electric.

8. The definitive receipt of the Aguirre plants by plaintiff and the agreement above referred to between the parties constitute a settlement or acceptance by accord and satisfaction which prevents plaintiff to claim for the alleged breaches of the contract which are alleged in paragraphs 5-10 of the amended complaint.

SIXTH AFFIRMATIVE DEFENSE

1. Paragraphs 5-10 of the amended complaint intend to adduce a cause of action for the breach of the contract executed between the parties relative to the Aguirre combined cycle plants.

2-6. General Electric reiterates paragraphs 2-6, inclusive, of its Fourth Affirmative Defense, and incorporates them, by reference, herein as paragraphs 2-6, inclusive, of this Sixth Affirmative Defense.

7. Up to the point or degree, if any, in which the Aguirre combined cycle plants have failed to operate as anticipated or have operated in an unsatisfactory manner, it is exclusively due to the fault or refusal on the part of plaintiff to maintain and operate in an adequate manner the plants or their components or elements; and to the misuse and substantial and prejudicial alterations of the components and elements of said plants on the part of plaintiff.

8. Plaintiff's acts and omissions referred to in paragraph 7 of this Sixth Affirmative Defense constitute negligent, seriously faulty and temerary behavior on part of the plaintiff.

9. Consequently, any damage or loss which may have suffered plaintiff or that it may suffer in the future, is exclusively due to its own acts and omissions.

SEVENTH AFFIRMATIVE DEFENSE

1. Paragraphs 5-10 of the amended complaint intend to adduce a cause of action for breach of the contract executed between the parties relative to the Aguirre combined cycle plants.

2. Up to the point or degree, if any, in which the Aguirre combine cycle plants have failed to operate as anticipated or have operated in an unsatisfactory manner, it is exclusively and/or substantially due to the fault or refusal on the part of plaintiff to maintain and operate in an adequate manner the plants or their components and element; and to the misuse and substantial and prejudicial alterations made to the components and elements of said plants on the part of plaintiff.

3. Plaintiff's acts and omissions mentioned in paragraph 2 of this Seventh Affirmative Defense constitute negligent, seriously faulty and temerary behavior on the part of plaintiff.

4. To the extent that plaintiff requests in paragraph 10 of the amended complaint that there be ordered the compliance in a specific manner of an obligation, the remedy referred to by said request does not proceed, by virtue of what is alleged in paragraphs 2 and 3 of this Seventh Affirmative Defense.

5. In addition, plaintiff is not entitled to any indemnification for any damages that it may have suffered or that it may suffer in the future which are attributable to its own acts and omissions.

EIGHTH AFFIRMATIVE DEFENSE

1. Paragraphs 5-10 of the amended complaint intend to adduce a cause of action for breach of the contract executed between the parties relative to the Aguirre combined cycle plants.

2. General Electric alleges, by information and belief, that any losses and damages that plaintiff may have suffered as a result of any alleged breach of said contract on the part of General Electric, as it is adduced in the amended complaint,

were wholly or partially caused by the fact that plaintiff did not exercise due care and diligence to avoid such losses and damages and to mitigate them.

NINTH AFFIRMATIVE DEFENSE

1. Paragraphs 5-10 of the amended complaint intend to adduce a cause of action for breach of the contract executed between the parties relative to the Aguirre combined cycle plants.

2. The aforesaid contract constitutes one of lease of works and services in what respects to the obligation of constructing buildings and structures for the Aguirre combined cycle plants and it constitutes a purchase and sale contract in what respects to all the equipments and installations of the two combined cycle plants which stipulated in the contract executed between the parties.

3. To the extent that plaintiff claims losses or damages arising from the alleged breaches of the obligations by General Electric as seller of the equipments and installations of the two Aguirre combined cycle plants, as well as of their components and elements, under the contract executed between plaintiff and General Electric on March 14, 1974, such claims are time-barred pursuant to the provisions of article 1379 of the Civil Code of Puerto Rico (1930 edition), 31 L.P.R.A. § 3847.

TENTH AFFIRMATIVE DEFENSE

1. Paragraphs 11 and 12 of the amended complaint intend to adduce a cause of action for fraudulent breach on the part of General Electric of its obligations under clause 19 of the agreement subscribed on March 15, 1974.

2. Said plaintiff's cause of action is time-barred pursuant to the provisions of articles 1868 and 1253 of the Civil Code of Puerto Rico (1930 edition), 31 L.P.R.A. Sec. 5298 and Sec. 3512.

ELEVENTH AFFIRMATIVE DEFENSE

1. In paragraphs 11, 12, 13, 15A and 16 of the amended complaint, the plaintiff alleges that General Electric paid or was involved in the payment of a bribe to Carlos Valazquez-Toro.

2. The offers made by General Electric to plaintiff were duly evaluated and resulted to be the lowest and best of all the offers received by plaintiff in relation to the proposed Aguirre combined cycle plants.

3. The offers made by General Electric to plaintiff were, in fact, the lowest and the best of all the offers received by plaintiff in relation to the proposed Aguirre combined cycle plants. Based on the foregoing, the alleged bribe, even if it had been paid (which is denied by General Electric), did not constitute a factor in the adjudication of the contract to General Electric.

4. Consequently, the alleged bribe, even if it had been paid (which is denied by General Electric), could not have caused, nor it caused, any type of damage to plaintiff.

TWELFTH AFFIRMATIVE DEFENSE

1. The allegations contained in paragraphs 11 and 12 of the amended complaint do not adduce a claim which would justify the award of a remedy in favor of plaintiff and against General Electric, inasmuch as the behavior alleged in said paragraphs does not constitute a breach of clause 19 of the agreement subscribed between the parties on March 15, 1974.

THIRTEENTH AFFIRMATIVE DEFENSE

1. In the measure in which the allegations contained in paragraphs 11 and 12 of the amended complaint intend to adduce a claim for the same damages alleged in paragraph 10 of the amended complaint, said allegations do not adduce a claim which would justify the award of a remedy in favor of plaintiff and against General Electric.

FOURTEENTH AFFIRMATIVE DEFENSE

1. In the measure that the allegations contained in paragraphs 11 and 12 of the amended complaint intend to adduce a claim for the damges alleged in paragraph 10 of the amended complaint, General Electric reiterates and incorporates herein, by reference, its affirmative defenses above stated, from the first up to the ninth, as its fourteenth affirmative defense.

FIFTEENTH AFFIRMATIVE DEFENSE

1. Paragraphs 11 and 12 of the amended complaint intend to adduce a claim for fraudulent breach on part of General Electric of its obligations under clause 19 of the agreement subscribed between the parties on March 15, 1974.

2. If said breach occurred (which is denied by General Electric), plaintiff induced, required and/or participated in said breach.

3. Consequently, plaintiff is not entitled to claim nor to obtain any remedy for any damages or losses resulting from said alleged breach.

SIXTEENTH AFFIRMATIVE DEFENSE

1. Paragraphs 13, 14 and 15 intend to adduce a cause of action against General Electric and the rest of the defendants because they illegally conspired between themselves to retain money belonging to plaintiff.

2. Said cause of action is time-barred pursuant to the provision of article 1868 of the Civil Code of Puerto Rico (1930 edition), 31 L.P.R.A. Sec. 5298.

SEVENTEENTH AFFIRMATIVE DEFENSE

1. In the measure in which the allegations contained in paragraphs 13, 14 and 15 of the amended complaint intend to adduce a cause of action against General Electric for the same damages claimed in paragraph 10 of the amended complaint, said allegations do not adduce a claim which would justify the

award of a remedy in favor of plaintiff and against General Electric.

EIGHTEENTH AFFIRMATIVE DEFENSE

1. Paragraphs 13, 14 and 15 of the amended complaint intend to adduce a cause of action against General Electric and the rest of defendants because they illegally conspired between themselves to retain money belonging to plaintiff.

2. If General Electric participated in said conspiration (which is denied by General Electric), plaintiff induced, rquired and/or participated in said conspiration.

3. Consequently, plaintiff is not entitled to claim nor to obtain any remedy for any damages or losses resulting from what is alleged in paragraphs 13, 14 and 15 of the amended complaint.

NINETEENTH AFFIRMATIVE DEFENSE

1. In the measure in which the allegations contained in paragraphs 13, 14 and 15 intend to adduce a cause of action against General Electric for the same damages claimed in paragraph 10 of the amended complaint, reiterates and incorporates herein, by reference, the preceding affirmative defenses from the first up to the ninth as its nineteenth affirmative defense.

TWENTIETH AFFIRMATIVE DEFENSE

1. The allegations contained in paragraph 15A of the amended complaint do not adduce a claim which would justify the award of a remedy in favor of plaintiff and against General Electric, inasmuch as the behavior alleged in said paragraph 15A does not constitute a breach of clause 17 of the agreement subscribed between the parties on March 15, 1974.

TWENTY-FIRST AFFIRMATIVE DEFENSE

1. Paragraph 15A of the amended complaint intends to adduce a cause of action against General Electric alleging that

the latter "*deceitfully* failed to comply with its obligations contracted under article 17" of the agreement subscribed between the parties on March 15, 1974.

2. In said averment of fraud, paragraph 15A does not state in detail the circumstances which constitute fraud.

3. Said averment of fraud, in general terms, as provided in Rule 7.2 of the 1979 Rules of Civl Procedure, is insufficient and does not adduce a claim which would justify the award of a remedy in favor of plaintiff and against General Electric.

TWENTY-SECOND AFFIRMATIVE DEFENSE

1. Paragraph 15A of the amended complaint intend to adduce a claim for breach of clause 17 of the agreement subscribed between the parties on March 15, 1974.

2. In the measure that plaintiff requested invalidation of said contract, said invalidation action is time-barred pursuant to the provisions of article 1253 of the Civil Code of Puerto Rico (1930 edition), 31 L.P.R.A. Sec. 3512.

TWENTY-THIRD AFFIRMATIVE DEFENSE

1. Paragraph 15A of the amended complaint intend to adduce a claim for fraudulent breach of the obligations of General Electric under clause 17 of the agreement subscribed on March 15, 1974.

2. If said breach occurred (which is denied by General Electric), plaintiff induced, required and/or participated in said breach.

3. Consequently, plaintiff is not entitled to request nor to obtain any remedy for any damages or losses resulting from said alleged breach.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

1. Paragraph 15A of the amended complaint intends to adduce a claim for breach of clause 17 of the agreement subscribed on March 15, 1974.

2. The individual units which compose the two Aguirre combined cycle plants were accepted by plaintiff and commercial operations were commenced in each one of the years 1975, 1976 and 1977.

3. The two plants were accepted by plaintiff, along with all their components and elements, in the year 1977.

4. In 1978, the parties arrived at a final settlement agreement by virtue of which General electric agreed to waive the collection of certain sums of money that plaintiff owed under the contract relative to the Aguirre combined cycle plants, in exchange and in consideration for plaintiff's agreement to waive on its part certain alleged claims against General Electric which arose from the execution of said contract by General Electric.

5. Plaintiff failed or refused to adequately maintain and operate the two Aguirre combined cycle plants, as well as their components and elements, and altered in a substantial and prejudicial manner said plants, their components and elements, using them in an improper and abusive manner.

6. In the measure that plaintiff requests that invalidation of the contract executed between the parties, it is not entitled to any remedy by reason of what is alleged in paragraphs 2-5, inclusive, of the twenty-fourth affirmative defense.

TWNETY-FIFTH AFFIRMATIVE DEFENSE

1. Paragraphs 15, 17 and 18 of the amended complaint intend to adduce a cause of action against General Electric and the rest of the defendants under the provisions of 18 U.S.C. Sec. 1964(c).

2. This Superior Court lacks jurisdiction to adjudicate said cause of action.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

1. Paragraphs 15, 17, and 18 of the amended complaint intend to adduce a cause of action against General Electric and

the rest of the defendants under the provision of 18 U.S.C. Sec. 1964(c).

2. Said cause of action is time-barred pursuant to the provision of article 1868 of the Civil Code of Puerto Rico (1930 edition), 31 L.P.R.A. Sec. 5298.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

1. Paragraphs 15, 17 and 18 of the amended complaint intend to adduce a cause of action against General Electric and the rest of the defendants under the provisions of 18 U.S.C. Sec. 1964(c).

2. The allegations contained in said paragraphs do not justify the award of a remedy under the provisions of 18 U.S.C. 1964(c).

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

1. In the measure that the allegations contained in paragraphs 15, 17 and 18 intend to adduce a claim against General Electric for the same damages claim in paragraph 10 of the amended complaint, aid allegations do not adduce a claim which would justify the award of a remedy in favor of plaintiff and against General Electric.

TWENTY-NINTH AFFIRMATIVE DEFENSE

1. In the measure that the allegations contained in paragraphs 15, 17 and 18 of the amended complaint intend to adduce a claim against General Electric for the same damages alleged in paragraph 10 of the amended complaint, General Electric reiterates and incorporates herein, by reference, its affirmative defenses above stated, from the first up to the ninth, as its twenty-ninth affirmative defense.

THIRTIETH AFFIRMATIVE DEFENSE

1. Paragraphs 15, 17 and 18 of the amended complaint intend to adduce a cause of action against General Electric and the rest of the defendants under the provision of 18 U.S.C. § 1964(c).

2. In paragraph 16 of the amended complaint, plaintiff alleges certain acts which, according to what is alleged in paragraph 17, constitute violations of the provisons of 18 U.S.C. § 1962. If said acts and violations occurred (which is denied by General Electric), plaintiff induced, required and/or participated in the acts and violations referred to.

3. Consequently, plaintiff is not entitled to request nor to obtain any remedy for any of the alleged losses or damages resulting from the alleged violation of 18 U.S.C. § 1962.

PRAYER

WHEREFORE, General Electric respectfully requests that this Honorable Court enter judgment:

1. Dismissing the amended complaint as General Electric is concerned;

2. Imposing to plaintiff costs, expenses and attorney's fees.

3. With any further legal relief or remedy that this Honorable Court may consider to be just and adequate.

I HEREBY CERTIFY: That on this same date, I sent by certified mail, return receipt requested, copy of the preceding answer to the complaint to: Francisco Ponsa Feliu, Esq., G.P.O. Box 4423, San Juan, Puerto Rico 00936; Alex Gonzalez, Esq., G.P.O. Box 6123, San Juan, Puerto Rico 0093; and to Miguel Gimenez Munoz, Esq., Suite 1001 First Federal Building, Stop 23, Santurce, Puerto Rico 00909.

San Juan, Puerto Rico, August 12, 1981.

SALDANA, LOPEZ-BARALT
& FEBUS BERNARDINI
P.O. Box 13954
Santurce, Puerto Rico 00908
Tel. 724-5545

By: (Sgd.)
LINO J. SALDANA

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL NO. 81-1685

PUERTO RICO ELECTRIC POWER AUTHORITY
Plaintiff

v.

GENERAL ELECTRIC COMPANY; TWOMBLY, INC.; KETTY GARCIA ARGUETA; ANA EVELYN VELAZQUEZ GARCIA and CARLOS VELAZQUEZ GARCIA
Defendants

COMPLAINT

TO THE HONORABLE COURT:

Now comes Puerto Rico Electric Power Authority through its undersigned attorneys and very respectfully states and prays:

1. The Puerto Rico Electric Power Authority, previously Water Resources Authority (hereinafter PREPA), is a public corporation of the Commonwealth of Puerto Rico, empowered to sue and to be sued in the Courts. It is and was, at all times relevant to this Complaint, responsible for supplying electric power to the whole island of Puerto Rico.

2. Defendant Electric Company (hereinafter GE) was and is, at all times relevant to this Complaint, a corporation organized under the laws of the State of New York, engaged in and whose activities affect interstate or foreign commerce.

3. Defendant Twombly, Inc. is a corporation organized under the laws of the State of New Jersey, and acted as subcontractor in Puerto Rico of defendant GE in relation to the Contract referred to in this Complaint. It is and was at all times

relevant to this Complaint, engaged in, and its activities affect, interstate and foreign commerce.

4. Defendant Ketty Garcia Argueta is the widow of Carlos Velazquez Toro; codefendants Ana Evelyn Velazquez Garcia and Carlos Velazquez Garcia are the daughter and son, respectively, of said Carlos Velazquez Toro; and said three defendants are the sole and universal heirs of said Carlos Velazquez Toro, who passed away in San Juan, Puerto Rico, on December 19, 1975.

5. This Court has jurisdiction of this action under the provisions of 18 USC Secs. 1961, 1962, 1964(c) and 1965.

6. After bidding procedures held in Puerto Rico in which defendant GE participated, or or about March 15, 1974, plaintiff PREPA and defendant GE entered into a Contract according to which GE agreed to design and construct for plaintiff two combined cycle generating plants in Puerto Rico, which under the terms of said Contract were to be reliable and efficient and to generate certain minimum amounts of electric energy at predetermined levels of efficiency to fulfill the requirements necessary for plaintiff's functions described below. The contract was entered into and signed in Puerto Rico.

7. Carlos Velazquez Toro was at that time of the bidding proceedings and signing of the Contract, an officer or employee of plaintiff PREPA, who illegally and fraudulently participated in the benefits of said Contract, or part thereof, being paid and accepting a bribe of no less than $1,250,000.00 from defendants GE and Twombly, Inc., all without the knowledge of PREPA, and fraudulently concealed by defendants GE and Twombly and the said Carlos Velazquez Toro.

8. Defendants GE and Twombly, Inc. conspired between themselves and with other persons, including Carlos Velazquez Toro, to illegally and fraudulently misappropriate funds of plaintiff PREPA in Puerto Rico and to offer and pay a bribe as alleged herein, with which funds and in furtherance of said conspiracy a bribe was offered to, accepted by, and paid to said

Carlos Velazquez Toro, by GE and Twombly, Inc. in an amount of no less than $1,250,000.00 through a scheme devised among defendants and other persons.

9. Defendants GE and Twombly, Inc. and Carlos Velazquez Toro, and other persons, in or around March, 1974 and prior to and after said date conspired to perform and jointly and/or individually performed and/or participated and engaged in several acts in furtherance of said conspiracy, which constitute a pattern of racketeering activity, such as transmitting and causing to be transmitted bank cable-wire transfers of money in interstate commerce, and such as placing and causing to be place in the United States mail letters, checks and other documents to be delivered by the United States Postal Service, which acts were in violation of the laws of the United States and of the Commonwealth of Puerto Rico, and were for the purpose of GE obtaining from PREPA the Contract alleged in paragraph 6 and subcontracting it to Twombly, Inc.

10. Defendants actions were in violation of 18 USC Secs. 1341, 1343, 1952 and 1962, and of the Puerto Rico Penal Code, 33 LPRA, 4360 and 4363; 33 LPRA 272 and 273; among others.

11. All of the above mentioned overt acts of defendants were fraudulently concealed from plaintiff PREPA by a scheme devised and carried out by defendants GE, Twombly and other persons which consisted in generating the bribe money by the devise of irregular and simulated sales and subcontracts, with artificial and inflated prices, apparently normal business transactions, but which had the illegal and concealed purpose and intent of generating and obtaining from plaintiff the money to be used and which was used by GE and Twombly, Inc. for the bribe paid to Carlos Velazquez Toro.

12. Plaintiff PREPA has been injured in its business and property in Puerto Rico by reason of and caused by the guilty actions and defendants, sustaining damages in the amounts of at least $1,250,000.00 paid as bribe to Carlos Velazquez Toro as herein before alleged, plus $20,000,000.00 paid by plaintiff to GE in excess of the amount it would have paid to another

bidder, whose bid was not accepted as a result of defendants' illegal and fraudulent actions. Plaintiff has a right to recover threefold said damages sustained, and the cost of the suit including reasonable attorneys fees.

WHEREFORE, plaintiff prays that judgment be entered against defendants granting plaintiff threefold the damages sustained, plus costs, and reasonable attorneys' fees.

In San Juan, Puerto Rico, this 28 day of August, 1981.

FRANCISCO PONSA FELIU
FRANCISCO PONSA FLORES
EDDA PONSA FLORES
LAWRENCE E. DUFFY
GPO Box 4423
San Juan, P.R. 00936-4423
Tel: (809) 751-7205

/s/ Francisco Ponsa-Feliu
FRANCISCO PONSA-FELIU

/s/ Jose F. Irizarry
JOSE F. IRIZARRY
LEGAL ADVISOR OF THE
PUERTO RICO ELECTRIC POWER
AUTHORITY

/orr

ATTEST: A TRUE COPY
RAMON A. ALFARO
Clerk, U.S. District Court

By: Norman Aybar
NORMAN AYBAR
Deputy Clerk

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 81-1685 (GG)

PUERTO RICO ELECTRIC POWER AUTHORITY
Plaintiff

v.

GENERAL ELECTRIC COMPANY, et al.
Defendants

ANSWER OF GENERAL ELECTRIC COMPANY TO THE AMENDED COMPLAINT

TO THE HONORABLE COURT:

General Electric Company ("General Electric"), by its undersigned attorneys, for its answer to the Amended Complaint, states as follows:

1. General Electric admits the allegations contained in Paragraph 1 of the Amended Complaint.

2. General Electric admits the allegations contained in Paragraph 2 of the Amended Complaint.

3. General Electric is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Amended Complaint, except that General Electric admits that Twombly, Inc. acted as a subcontractor in connection with the construction and installation of the Aguirre combined cycle plants.

4. In answer to Paragraph 4 of the Amended Complaint, General Electric states that the allegation that certain parties to this action and Carlos Velazquez Toro each are "enterprises" within the meaning of the Racketeer Influenced and Corrupt

Organizations Act ("RICO") is a legal conclusion and therefore requires no answer; admits that General Electric is and during all relevant times has been engaged in interstate and foreign commerce; states that General Electric is without knowledge or information sufficient to form a belief as to the scope of the activities of the other parties identified in Paragraph 4 of the Amended Complaint during the relevant time period, except that General Electric states that to the best of its knowledge, information and belief, Twombly, Inc. is and at all relevant times has been engaged in interstate and foreign commerce; and specifically denies that General Electric has violated or participated in the violation of any of the substantive prohibitions set out in RICO.

5. General Electric is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Amended Complaint.

6. In answer to Paragraph 6 of the Amended Complaint, General Electric admits that 18 U.S.C. § 1964(c) confers subject matter jurisdiction over this action on this Court; denies that plaintiff has stated a claim under § 1964(c) or any other provision of RICO upon which any relief can be granted against General Electric; and denies the allegations regarding personal jurisdiction and venue under 18 U.S.C. §§ 1961, 1962, 1964(c) and 1965, and 28 U.S.C. § 1391. To the extent not specifically admitted in the immediately preceding sentence, General Electric denies all of the allegations contained in Paragraph 6 of the Amended Complaint.

7. In answer to the allegations contained in the first sentence of Paragraph 7 of the Amended Complaint, General Electric admits that plaintiff and General Electric executed a written agreement dated March 15, 1974, which agreement pertains to the construction and installation of the Aguirre combined cycle plants; states that such written agreement does not constitute the entire contract between the parties pertaining to such combined cycle plants; denies the allegations contained in such first sentence to the extent that such allegations imply

that the March 15, 1974 agreement constitutes the entire contract between the parties pertaining to the combined cycle plants; states that the contract documents speak for themselves; denies the allegations contained in such first sentence which purport to describe the substance of the parties' agreement to the extent that they are inconsistent with or contrary to such contract documents. In further answer to the allegations contained in such first sentence, General Electric states that to the best of its information, knowledge and belief, the contract between it and plaintiff, consisting in part of the March 15, 1974 written agreement, resulted from an invitation for a proposal from plaintiff directed to General Electric, proposals to plaintiff from General Electric and negotiations between plaintiff and General Electric; that similar or identical invitations for a proposal were directed to other vendors; and that some or all such vendors made proposals to plaintiff. General Electric denies the allegations contained in the second sentence of Paragraph 7 of the Amended Complaint.

8. General Electric denies the allegations contained in Paragraph 8 of the Amended Complaint, except that it admits that to the best of its information, knowledge and belief, Carlos Velazquez Toro was an officer of plaintiff at the time General Electric made its initial proposal to plaintiff and at the time the March 15, 1974 written agreement was executed, although General Electric denies that such agreement constitutes the entire contract between plaintiff and General Electric.

9. General Electric denies the allegations contained in Paragraph 9 of the Amended Complaint.

10. General Electric denies the allegations contained in Paragraph 10 of the Amended Complaint.

11. General Electric denies the allegations contained in Paragraph 11 of the Amended Complaint.

12. General Electric denies the allegations contained in Paragraph 12 of the Amended Complaint.

13. General Electric denies the allegations contained in Paragraph 13 of the Amended Complaint.

14. General Electric denies the allegations contained in Paragraph 14 of the Amended Complaint to the extent that such allegations are directed against it and specifically denies that plaintiff has been damaged or injured in any way by any act or omission of General Electric. In further answer to Paragraph 14, General Electric states that its proposal to plaintiff was fairly evaluated to be the lowest and best plaintiff received and in fact was the lowest and best that plaintiff received; that the alleged bribe, even if made (which General Electric denies), was not a factor in the award of the contract to General Electric; and that, accordingly, such alleged bribe, even if made (which General Electric denies), could not have caused any damage or injury to plaintiff.

FIRST AFFIRMATIVE DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted against defendant General Electric.

SECOND AFFIRMATIVE DEFENSE

The purported claim set out in the Amended Complaint is barred by the applicable statute of limitations, Article 1868 of the Civil Code of Puerto Rico (1930 edition), 31 L.P.R.A. § 5298.

THIRD AFFIRMATIVE DEFENSE

Paragraphs 8 through 13 of the Amended Complaint state generally that General Electric participated in and/or performed a number of unlawful acts, which acts allegedly constitute a violation or violations of 18 U.S.C. § 1962. If the Court finds that General Electric in fact participated in or performed any of such unlawful acts or otherwise violated § 1962 (which General Electric denies), plaintiff nevertheless is barred from recovering any relief whatever for any alleged loss or damage resulting from such alleged acts and violations because plaintiff

induced, required and/or participated in such acts and violations.

FOURTH AFFIRMATIVE DEFENSE

General Electric's proposals to plaintiff were fairly and properly evaluated by plaintiff to be the lowest and best plaintiff received in connection with the proposed Aguirre combined cycle plants. General Electric's proposals to plaintiff in fact were the lowest and best plaintiff received in connection with the proposed Aguirre combined cycle plants. Based on the foregoing, the alleged bribe, even if made (which General Electric denies), was not a factor in the award of the contract to General Electric. Accordingly, such alleged bribe, even if made (which General Electric denies), could not have caused and did not cause any damage or injury to plaintiff.

WHEREFORE, General Electric requests that the Court enter judgment dismissing with prejudice the Amended Complaint as to General Electric and awarding to General Electric its costs herein and such other and further relief as the Court deems appropriate and just.

In San Juan, Puerto Rico, this 12th day of February, 1982.

I HEREBY CERTIFY that a true and exact copy of this Answer has been notified today, by certified mail, to Francisco

Ponsa Feliu, Esq., attorney for plaintiff, G.P.O. Box 4423, San Juan, Puerto Rico 00936.

San Juan, Puerto Rico, this 12th day of February, 1982.

SALDANA & FEBUS BERNARDINI
Attorneys for General Electric
P.O. Box 13954
Santurce, Puerto Rico 00908
Tel. 724-5545

/s/By: Lino J. Saldana
LINO J. SALDANA

ATTEST: A TRUE COPY
RAMON A. ALFARO
Clerk, U.S. District Court

By: Norman Aybar
NORMAN AYBAR
Deputy Clerk

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL NO. 81-1685 (GG)

PUERTO RICO ELECTRIC POWER AUTHORITY
Plaintiff

v.

GENERAL ELECTRIC COMPANY; et al.
Defendants

AMENDED COMPLAINT

TO THE HONORABLE COURT:

Now comes Puerto Rico Electric Power Authority through its undersigned attorneys and very respectfully states and prays:

1. The Puerto Rico Electric Power Authority, previously Water Resources Authority (hereinafter PREPA), is a public corporation of the Commonwealth of Puerto Rico, empowered to sue and to be sued in the Courts. It is and was, at all times, relevant to this complaint, responsible for supplying electric power to the whole island of Puerto Rico.

2. Defendant General Electric Company (hereinafter GE) was and is, at all times relevant to this Complaint, a corporation organized under the laws of the State of New York.

3. Defendant Twombly, Inc. is a corporation organized under the laws of the State of New Jersey, and acted as subcontractor in Puerto Rico of defendant GE in relation to the Contract referred to in this Complaint.

4. Plaintiff PREPA, and defendants GE and Twombly, and Carlos Velazquez Toro, were at all times relevant to this complaint, enterprises within the meaning of the Racketeer

Influenced and Corrupt Organization statute, 18 USC Secs. 1861-1868 (RICO) and were engaged in and whose activities affected interstate or foreign commerce.

5. Defendant Kitty Garcia Argueta is the widow of Carlos Velazquez Toro; codefendants Ana Evelyn Velazquez Garcia and Carlos Velazquez Garcia are the daughter and son, respectively, of said Carlos Velazquez Toro; and said three defendants are the sole and universal heirs of said Carlos Velazquez Toro, who passed away in San Juan, Puerto Rico on December 19, 1975.

6. This Court has jurisdiction and venue of this action under the provisions of 18 USC Secs. 1961, 1962, 1964(c) and 1965; and 28 U.S.C. Sec. 1391.

7. After bidding procedures held in Puerto Rico in which defendant GE participated, on or about March 15, 1974 plaintiff PREPA and defendant GE entered into a Contract according to which GE agreed to design and construct for plaintiff two combined cycle generating plants in Puerto Rico, which under the terms of said Contract were to be reliable and efficient and to generate certain minimum amounts of electric energy at predetermined levels of efficiency to fulfill the requirements necessary for plaintiff's functions described above. The contract was entered into and signed in Puerto Rico.

8. Carlos Velazquez Toro was at that time of the bidding proceedings and signing of the Contract, an officer or employee of plaintiff PREPA, who illegally and fraudulently participated in the benefits of said Contract, or part thereof, being paid and accepting a bribe of no less than $1,250,000.00 from defendants GE and Twombly, Inc., all without the knowledge of PREPA, and fraudulently concealed by defendants GE and Twombly and the said Carlos Velazquez Toro.

9. Defendants GE and Twombly, Inc. conspired between themselves and with other persons, including Carlos Velazquez Toro, and agreed to illegally and fraudulently misappropriate funds of plaintiff PREPA in Puerto Rico and to

offer and pay a bribe as alleged herein, with said funds and in furtherance of said conspiracy, a bribe was offered to, accepted by, and paid to said Carlos Velazquez Toro, by GE and Twombly, INC. in an amount of no less than $1,250,000.00 through a scheme devised and carried out among defendants and other persons.

10. Defendants GE and Twombly, Inc. and Carlos Velazquez Toro, and other persons, in or around March 1974 and prior to and after said date conspired as alleged in paragraphs 8 and 9 hereinbelow, and agreed to perform and jointly and/or individually performed and/or participated and engaged in several acts in furtherance of said conspiracy, as appears in paragraph 13 hereinafter, all of which constitute a pattern of racketeering activity, such as transmitting and causing to be transmitted bank cable-wire transfers of money in interstate commerce and such as placing and causing to be placed in the United States mail, letters, checks and other documents to be delivered by the United States Postal Service, which acts were in violation of the laws of the United States and of the Commonwealth of Puerto Rico, and were for the purpose of GE obtaining from PREPA the Contract alleged in paragraph 7 and subcontracting all or part of it to Twombly, Inc.

11. Defendants actions were in violation of 18 USC Secs. 1341, 1343, 1952 and 1962, and of the Puerto Rico Penal Code, 33 LPRA, 4360 and 4363; 33 LPRA 272 and 273; and of Section 1802 of the Civil Code of Puerto Rico, among others.

12. By all such acts of defendants GE, Twombly, and the said Carlos Velazquez Toro, alleged hereinbefore, they directly or indirectly conducted and/or participated in the conduct of each other's affairs, and of plaintiff's affairs through a pattern of racketeering activity.

13. All of the above mentioned overt acts of defendants were fraudulently concealed from plaintiff PREPA by a scheme devised and carried out by defendants GE, Twombly and other persons which consisted in generating the bribe money by the device of irregular and simulated sales and

subcontracts, with artificial and inflated prices, apparently normal business transactions, but which had the illegal and concealed purpose and intent of generating and obtaining from plaintiff without plaintiff's knowledge, the money to be used and which was used by GE and Twombly, Inc. for the bribe paid to Carlos Velazquez Toro.

14. Plaintiff PREPA has been injured in its business and property in Puerto Rico by reason of and caused by the unlawfull and culpable acts of defendants, sustaining damages in the amounts of at least $1,250,000.00 paid by as bribe to Carlos Velazquez Toro as herein before alleged, plus $20,000,000.00 paid by plaintiff to GE in excess of the amount it would have paid to another bidder, whose bid was not accepted as a result of defendants' illegal and fraudulent actions. Plaintiff has a right to recover either the damages alleged, or threefold said damages sustained as well as the costs and expenses of the suit including attorneys fees.

WHEREFORE, plaintiff prays that judgment be entered against defendants granting plaintiff the damages sustained, or threefold said damages, plus costs, expenses and attorneys' fees.

I HEREBY CERTIFY: That on this same date copy of the foregoing Amended Complaint has been mailed to Miguel

Gimenez Munoz, Esq., First Federal Building, Suite 1001, Stop 23, Santurce, Puerto Rico 00909.

San Juan, Puerto Rico, this 30th day of December, 1981.

FRANCISCO PONSA FELIU
FRANCISCO PONSA FLORES
EDDA PONSA FLORES
LAWRENCE E. DUFFY
GPO Box 4423
San Juan, P.R. 00936-4423
Tel: 751-7205

/s/ Francisco Ponsa-Feliu
FRANCISCO PONSA-FELIU

/s/ Jose F. Irizarry
JOSE F. IRIZARRY
Legal Advisor of the
Puerto Rico Electric
Power Authority

/orr

ATTEST: A TRUE COPY
RAMON A. ALFARO
Clerk, U.S. District Court

By: Norman Aybar
NORMAN AYBAR
Deputy Clerk

APPENDIX J

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

CIVIL NO.: 81-1111(908)

PUERTO RICO ELECTRIC POWER AUTHORITY,
Plaintiff

v.

GENERAL ELECTRIC COMPANY; TWOMBLY, INC.; KETTY GARCIA ARGUETA; ANA EVELYS VELAZQUEZ GARCIA; and CARLOS VELAZQUEZ GARCIA
Defendants

RE:
BREACH OF CONTRACT
AND DAMAGES

MOTION TO DISMISS JURISDICTIONAL DEFENSE UNDER RULE 10.4

TO THE HONORABLE COURT:

Comes now defendant, General Electric Company (General Electric), through its undersigned attorneys, and very respectfully states and prays:

1. In parapraphs 16, 17 and 18 of the amended complaint filed by the Electric Power Authority (PREPA), it is alleged that the appearing party and other persons ". . . were engaged in several criminal acts which constitute a pattern of racketeering activity" in violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.* (RICO).

2. Based on the foregoing allegation, plaintiff claims that, pursuant to the provisions of Section 4(c) of the aforementioned Act, 18 U.S.C. 1964(c), it is entitled to recover threefold

the damages allegedly suffered by it as a result of the acts imputed to the herein appearing party. Said damages are estimated by plaintiff in a sum of not less than one hundred eighty nine million dollars ($189,000,00).

3. The herein appearing party alleges in the twenty-fifth affirmative defense of its answer to the complaint filed on this same date that the cause of action raised under the RICO doctrine in paragraphs 16, 17 and 18 of the amended complaint is one over which this Honorable Superior Court lacks jurisdiction.

4. The aforesaid affirmative defense for lack of jurisdiction over the subject matter is based on that:

(a) The cause of action under "RICO" is one which does not have an equivalent in the Puerto Rican law; and

(b) by virtue of the language contained in said federal statute, federal courts have exclusive jurisdiction over said cause of action and, thus, the Superior Court of Puerto Rico lacks jurisdiction over the same.

5. The lack of subject matter jurisdiction defense which has been raised by the herein appearing party is one of those enumerated in Rule 10.2 of the 1979 Rules of Civil Procedure. For said reason, pursuant to the provisions of Rule 10.4 of said body of laws, the jurisdiction defense can be adjudged prior to trial.

6. There is attached and made to form a part hereof, a memorandum setting forth in more detail the arguments and authorities supporting the appearing party's contention of lack of jurisdiction over the subject matter in relation to the cause of action raised in paragraphs 16, 17, and 18 of the amended complaint.

WHEREFORE, it is very respectfully requested that, pursuant to Rule 10.4 of Civil Procedure, this Honorable Court grant the twenty-fifth affirmative defense raised by the appearing party, thus, dismissing for lack of jurisdiction the

cause of action set forth in paragraphs 16, 17 and18 of the amended complaint.

RESPECTFULLY SUBMITTED, at San Juan, Puerto Rico, this 10th day of August, 1981.

SALDANA, LOPEZ-BARALT & FEBUS BERNARDINI
P.O. Box 13954
Santurce, Puerto Rico 00908
Telephone 724-5545

/s/ By: (Sgd.) Rafael Escalera Rodriguez

I HEREBY CERTIFY, that on this same date, I sent a true and exact copy of this motion, by certified mail, return receipt requested, to: Francisco Ponsa Feliu, Esq., G.P.O. Box 4423, San Juan, Puerto Rico; Alex Gonzalez, Esq., G.P.O. box 6123, San Juan, Puerto Rico 00936; and Miguel A. Gimenez Munoz, Esq., First Federal Bldg., Suite 1001, Stop 23, Santurce, Puerto Rico 00909.

/s/ (Sgd.) Rafael Escalera Rodriguez
RAFAEL ESCALERA RODRIGUEZ

(Seal of the
Superior Court,
San Juan Part)

CERTIFICATE

I CERTIFY that this is a true and exact copy of the original which appears of record, and at the request of _____ _____ I issue these presents

[X] upon payment of fees

[ ] for official use, free of charge

/s/ By Doris Morales
DORIS MORALES
Clerk

August 18, 1983

/s/ By (Illegible)
Deputy Clerk

Four internal revenue stamps affixed and cancelled:

A6410859 — $1.00
A6336044 — 50¢
A1619693 — 10¢
A1619688 — 10¢

APPENDIX K

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

CIVIL NO.: 81-1111(908)

PUERTO RICO ELECTRIC POWER AUTHORITY,
Plaintiff

v.

GENERAL ELECTRIC COMPANY; TWOMBLY, INC.; KETTY GARCIA ARGUETA; ANA EVELYN VELAZQUEZ GARCIA; and CARLOS VELAZQUEZ GARCIA
Defendants

RE:
BREACH OF CONTRACT
AND DAMAGES

MEMORANDUM IN OPPOSITION TO CODEFENDANT GENERAL ELECTRIC COMPANY'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Codefendant General Electric has asked this Court "to dismiss for lack of jurisdiction over the subject matter" the cause of action brought by plaintiff, the Electric Power Authority, pursuant to the provisions of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C., Sec. 1961 *et seq.* (hereinafter referred to as RICO). Codefendant sustains that jurisdiction over actions arising under RICO is exclusive of the federal courts. This issue has not yet been resolved.

Codefendant General Electric's contention is not supported by the letter of the statute, by the case law, by the legislative history, or by the analysis of similar statutes.

Plaintiff contends that state courts have jurisdiction over the cause of action brought under RICO in this case, on the following grounds:

I. Presumption Of Concurrent Jurisdiction Of Federal And State Courts Over Cases Arising Under Federal Law

It is a well-established general rule that whenever a statute creates a federal cause of action, it is also presumed that it creates concurrent jurisdiction of federal courts with state courts, unless Congress expressly provides to the contrary. See Wright, Miller & Cooper, *Federal Practice and Procedure*, Sec. 3527, p. 124. It was held by the United States Supreme Court in *Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 82 S. Ct. 519, 7 L.Ed.2d 483 (1962):

> "We start with the premise that nothing in the concept of our federal system prevents state courts from enforcing rights created by federal law. Concurrent jurisdiction has been a common phenomenon in our judicial history, and exclusive federal court jurisdiction over cases arising in federal law has been the exception rather than the rule." 368 U.S. 507-508.
>
> "The general question, whether State Courts can exercise concurrent jurisdiction with the Federal courts in cases arising under the Constitution, laws and treaties of the United States, has been elaborately discussed both on the bench and in published treatises . . . (and) the result of these discussions has, in our judgment, been . . . to affirm the jurisdiction, where it is not excluded by express provision, or by incompatibility in its exercise arising from the nature of the particular case." 368 U.S. 508.

Thus, it is evident that, unless it clearly arises from an express provision, or implicitly by incompatibility, the state court has jurisdiction over this action.

II. The Language Of The Applicable RICO Section Does Not Expressly Establish Exclusive Federal Court Jurisdiction

Subsection (c) of Section 1964 of title 18 of the U.S. Code, one of the grounds of the cause of action exercised by plaintiff in this case, provides:

> "Any person injured in his business or property by reason of a violation of section 1962 of this chapter *may* sue therefor in any approporate United States District Court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." (emphasis supplied)

Codefendant General Electric alleges that the language above cited is clear and free from ambiguity, and it invokes Section 14 of the Civil Code of Puerto Rico (31 L.P.R.A., Sec. 14) in the sense that its letter should be dealt with. We agree. The word "may" constitutes a permit, but not a mandate, and like this it has been repeatedly held by the United States Supreme Court and the federal courts.

In *Charles Dowd Box Co.* v. *Courtney*, supra, 368 U.S. 502, 82 S. Ct. 519, 7 L.Ed.2d 483 (1962), the controversy was whether Section 301(a) of the 1967 Labor Management Relations Act (29 U.S.C. § 185(a)) excluded the state court from having jurisdiction over the action. The pertinent section provided:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organization, *may* be brought in any district court of the United States having jurisidction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (emphasis supplied)

The Court resolved that the inclusion of the word "may" was not sufficient to grant exclusive federal jurisdiction. Upon

finding that the state court had concurrent jurisdiction, the Court stated:

> "It has not been argued, nor could it be, that § 301(a) speaks in terms of exclusivity of federal court jurisdiction over controversies within the statute's purview. On its face § 301(1) simply gives the federal district courts jurisdiction over suits for violation of certain specified types of contracts."
>
> The statute does not state nor even suggest that such jurisdiction shall be exclusive. It provides that suits of the kind described 'may' be brought in the federal district courts, not that they must be." (368 U.S. 502, at 506; 7 L.Ed.2d 483, at 486)

Likewise, in *Ted's Tire Service Inc.* v. *Chevron U.S.A., Inc.*, 470 F. Supp. 163 (D. Conn. 1979), the Court held that state and federal courts jurisdiction is concurrent in actions brought under the Petroleum Marketing Practices Act (PMPA), 15 U.S.C. §§ 2802 *et seq.* The Act provides, in its pertinent part, that the action:

> "*may* be brought, without regard to the amount in controversy, in the district court of the United States, in any judicial district in which the principal place of business of such franchisor is located or in which such franchisee is doing business. Sec. 2805(a). (emphasis supplied)

Interpreting this provision, the Court stated:

> ". . . there is nothing in the PMPA which suggests that the (state) Court would not have had jurisdiction over a complaint brought under the PMPA. The Act stipulated that a civil action to redress violation of the statute 'may be brought' in a federal district court; it does not state that such an action *must* be instituted in federal court . . . It has long been established that, absent any indication that the federal courts have exclusive jurisdiction over a particular subject, federal laws may be enforced in either the state or federal courts." *Claflin* v. *Houseman*, 93 U.S. 130, 137, 23 L.Ed. 833 (1876); *Testa* v. *Katt*, 330 U.S. 386, 390-91, 67 S. Ct. 810, 91 L.Ed. 967 (1947).

Several state courts have expressed themselves in that same sense. *Sands* v. *Weingrad*, 99 Misc. 2d 598, 416 N.Y.S. 2d 969, (Sup. Ct. N.Y. County, 1979); *Peper* v. *Princeton University Board of Trustees*, 77 N.J. 55 (1978).*

Under RICO itself, the meaning of the word "may" has been interpreted as permissible and not mandatory. Section 1965 on "venue and process," provides:

> "(a) Any civil action or proceeding under section 1964 of this chapter against any person *may* be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs." (emphasis supplied)

In relation to this provision, in *Farmers Bank of State of Delaware* v. *Bell Mortgage Corp.*, 452 F. Supp. 1278, at 1280 (1978), the Court stated:

> ". . . the venue provisions of Section 1965 are not necessarily exclusive. The language of that provision merely says that an action 'may' be brought in that district.

It is compulsory to conclude that, contrary to codefendant General Electric's contention, the phrase "*may* sue . . . in any appropriate U.S. District Court" grants jurisdiction to federal courts, but that it does not exclude state courts and, thus, the general rule of concurrent jurisdiction must prevail.

III. The Legislative History Of RICO Does Not Indicate That Congress' Intention Was To Grant Exclusive Federal Court Jurisdiction

Throughout the RICO history the jurisdiction matter is not discussed. It is just mentioned that federal courts are authorized to entertain civil actions arising from violations to the statute, but absolutely nothing is stated supporting the con-

---

*In this case, it was resolved that the state court had jurisdiction to decide on plaintiff's federal rights under Title VII of the 1969 Civil Rights Act, 42 U.S.C. § 2000 e-2(a) (1) and (2).

tention that actions shall be exclusive of federal courts. The only two mentions made about courts are the following:

> "District courts are authorized to prevent and restrain by civil process violations of the above standard by, among other things, the issuance of (1) orders of divestment; (2) prohibitions of business activity; and (3) orders of dissolution or reorganization." 1970 U.S. Code Congressional and Administrative News, p. 4010.

This has nothing to do with the private damage action and, in the event of having something to do, it does not exclude state courts. Neither are they excluded by the commentaries made by Representative Poff: ". . . private persons injured by reason of violation . . . may recover treble damages in federal court . . ." 116 Cong. Rec.-House, p. 35295.

In sum, no evidence appears from the legislative history to the effect that Congress' intention was to exclude state courts from jurisdiction. This conclusion is in agreement with the language used in the statute.

IV. The Reasons By Which It Has Been Interpreted That Actions Under Antitrust Laws Are Exclusive Of Federal Courts Do Not Apply To RICO

The actions under antitrust laws have traditionally been interpreted as granting exclusive jurisdiction to federal courts. Since the language of Section 4 of the Clayton Act (15 U.S.C. Sec. 15) is very similar to that of Section 1964(c) of RICO, defendant alleges that RICO should also be of exclusive federal jurisdiction. Defendant's reasoning is very superficial. In the first place, we have already seen how the language "may" has been repeatedly interpreted as granting authorization to federal courts, but not excluding state courts. The only exception seems to be regarding the antitrust laws. Therefore, it is necessary to see why it was thus construed in cases under antitrust laws.

The majority of the cases supporting this interpretation neither explain the reason for, nor discuss, the justification of said doctrine. To comprehend the reason for the existence of

the doctrine of exclusive federal court jurisdiction over actions under antitrust laws, it is necessary to go back to its origins.

In the first place, it is necessary to clear up that this interpretation did not arise from the language of Section 4 of the Clayton Act, which language is similar to that of RICO. Defendant alleges in its Memorandum that in *General Investment Co. v. Lake Shore & Michigan Southern Railway Co.*, 260 U.S. 261, 67 L.Ed. 244, the U.S. Supreme Court interpreted the language similar to that of RICO (Clayton, Sec. 4) as providing exclusive jurisdiction to federal courts and, specifically, that the private action under federal antitrust laws:

> ". . . is granted in terms which show that it is to be exercised only in a court of the United States."

(Defendant General Electric Company's memorandum, page).

This is not true. The above cited Court statement does not refer to Sec. 4 of the Clayton Act, but to Section 16,* which authorizes the private action for injunctive relief, not that for treble damages, and whose language is completely different from that of RICO:

> "That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties . . ." Id. at page 287.

The only mention about the private action to recover damages made by the Court in this case is the following:

> "As respects to Sherman Antitrust Act as it stood before it was supplemented by the Clayton Act, this Court has heretofore determined that the civil remedies specially provided in the act for actual and threatened violations of its provisions were intended to be exclusive, and that those remedies consisted only of (a) suits for injunctions brought by the United States in the public interest under § 4 and (b) private actions to recover damages brought

*15 USC, Sec. 26.

under § 7* *Minnesota* v. *Northern Securities Co.*, 194 U.S. 48, 71, 48 L.Ed. 870, 881, 24 Sup. Ct. Rep. 598; *D. R. Wilder Mfg. Co.* v. *Corn Products Ref. Co.*, 236 U.S. 165, 174, 59 L.Ed. 520, 525, 35 Sup. Ct. Rep. 398 Ann. Cas. 1916 A. 118; *Paine Lumber Co.* v. *Neal*, 244 U.S. 459, 471, 61 L.Ed. 1256, 1264, 37 Sup. Ct. Rep. 718; *Geddes* v. *Anaconda Copper Min. Co.*, 254 U.S. 590, 593, 65 L.Ed. 425, 429, 41 Sup. Ct. Rep. 209." Id. at page 259.

Be it observed that reference made to exclusiveness is in relation to remedies, not to jurisdiction. The Court was referring to the interpretation which limited the injunctive equity actions to those brought by the government, without allowing them to private persons. The four cases cited deal with that matter, *none* of which is for treble damages, as we shall demonstrate hereinbelow:

Minnesota v. *Northern Securities Co.* was a case brought by the state in which no specific direct damage action existed or was alleged against plaintiff. The damage was a remote and indirect one and of the nature which may be alleged by any member of the general public.

In the above case, the Court held that Congress' intent was to limit:

> ". . . direct proceedings in equity to prevent and restrain such violations of the antitrust act *as cause injury to the general public*, or to *all alike*, . . . to those instituted in the name of the U.S., under the 4th section of the act, by district attorneys of the United States, acting under the direction of the Attorney General; thus securing the enforcement of the act, *so far as direct proceedings in equity* are concerned, according to some uniform plan, operative throughout the entire country." Id. at L.Ed. 881, U.S. 71. (emphasis supplied)

Certainly, it has nothing to do with the private action for treble damages.

**This Sec. 7 of the Sherman Act which dealt with private actions to recover damages was revoked on July 7, 1955, 69 Stat. 283. Then, just Sec. 4 of the Clayton Act remained in force.

In *D. R. Wilder Mfg. Co.* v. *Corn Products Ref. Co.*, supra, the Court again passed over the exclusiveness of the remedy, by referring to the action to be brought by the Government:

> "Thus the statute expressly cast upon the Attorney General of the United States the responsibility of enforcing its provisions, making it the duty of the district attorneys of the United States in their respective districts, under his authority and direction, to act concerning any violations of the law. And in addition, evidently contemplating that the official unity of initiative which was thus created to give effect to the statute required a like unity of judicial authority, the statute in express terms vested the circuit court of the United States with 'jurisdiction to prevent and restrain violations of this act' . . ." Id. at L. ed. 526, U.S. 174.

In *Paine Lumber Co.* v. *Neal*, supra, there is again missing the element of direct damages suffered by plaintiff personally. In this context, the Court states that:

> ". . . a private person cannot maintain a suit for an injunction under § 4."

Once again, it refers to the injunctive action to be brought by the government.

Lastly, *Gaddes* v. *Anaconda*, supra, was a suit brought by minority stockholders to cancel the sale of corporate property based on that said sale was made with purposes which violated the provisions of the Sherman Anti-Trust Act. In this context, the Court repeats the doctrine of exclusiveness of remedies. Nevertheless, it decided to consider the case on the light of Sec. 16 of the Clayton Act (private injunction), which had been enacted subsequently to the inception of the action. The injunction was denied for lack of evidence supporting it.

In sum, we have seen that the exclusiveness doctrine under the antitrust laws arose from the exclusiveness of actions to enforce the law, prior to the approval of the private action for treble damages. These actions were to be brought by the Government alone and constituted equity actions not involving specific damages to any person in particular. With that back-

ground, it was logical to interpret the need to have a uniform plan throughout the country.

> "official unity of initiative . . . required a like unity of judicial authority. . . ." *D. R. Wilder Mfg. Co.* v. *Corn Products*, supra.

Congress, in its antitrust legislation, has clearly revealed its awareness as regards *uniformity* of its application at the national level. Although prior to 1955 the federal Act did not provide a period of limitation for private actions and simply state rules were applied thereto, in that year, Congress fixed a four-year period of limitation term for the private action for treble damages under the Clayton Act to recover damages caused to business or property. See *Chattanooga Foundry* v. *Atlanta*, 203 U.S. 390, 51 L.Ed. 241 (1906) and 15 U.S.C.A. Sec. 15(b).

On the other hand, in actions under RICO, this uniformity rule has not worried Congress. Nothing is provided by the Act as regards limitation of actions and this has been the prevailing situation since 1970 when the Act was enacted.

V. Equivalent Cause Of Action Under Puerto Rican Law

In its Motion to Dismiss Jurisdictional Defense, defendant General Electric includes as a ground for its contention that "The cause of action under 'RICO' is on which does not have an equivalent in the Puerto Rican law." (Motion, page 2.)*

This averment is incorrect. The "Act Against Organized Crime," Act No. 33 of July 13, 1978 (25 L.P.R.A. Secs. 971 *et seq.*), establishes almost word by word the same civil remedies to be brought by the government under RICO. Specifically, Section 1964 of RICO is practically alike to Section 971(h) of the Puerto Rican Act. However, the local Act is limited to the action to be brought by the Secretary of Justice.

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*This ground is not discussed in defendant's Memorandum.

The equivalent to the private action for treble damages in the Puerto Rican law is Section 1802 of the Civil Code of Puerto Rico (31 L.P.R.A. Sec. 5141), in which there is established the obligation to repair all damages caused by fault or negligence. Defendant General Electric itself recognizes said equivalence. In the Answer to the Amended Complaint, it alleges that this action is time-barred, pursuant to the provisions of Section 1868 of the Civil Code of Puerto Rico (31 L.P.R.A. Sec. 5298). (See Tenth and Sixteenth Affirmative Defenses, Answer of General Electric Company, pages 11 and 13). Said article provides:

> "The following prescribe in one year:
>
> (1) . . .
>
> (2) Actions to demand civil liability for grave insults or calumny, and for obligations arising from the fault or negligence mentioned in section 5141 of this title, from the time the aggrieved person had knowledge thereof."

Should this Court determine that it does not entertain jurisdiction under RICO, then it must entertain jurisdiction under Section 1802.

VI. No Reason Exists For Federal "Expertise" To Justify Exclusive Federal Jurisdiction

It cannot be asserted that jurisdiction must be exclusive because actions under RICO rest on federal courts "expertise" over the subject matter. In its definition of an offense, RICO includes the state laws. In its list of prohibited activities, Section 1961(1)(A) of the Act expressly includes offenses "chargeable under *state* law and punishable by imprisonment for more than one year." It is difficult to believe that Congress would have included state offenses should it had been its implicit intention to grant exclusive jurisdiction to federal courts by reason of their "expertise."

Even though Congress' intention would have been to implicitly grant exclusive federal court jurisdiction as regards some RICO provisions, the treble-damage provision is independent from the others.

Under similar circumstances, in *Sands* v. *Weingrad*, supra, the State Court of New York rejected the contention that certain provision of the Internal Revenue Code was of the exclusive jurisdiction of federal courts, even though others were. The pertinent Section reads:*

> "any person knowingly or by reason of negligence, discloses a return or return information . . . with respect to a taxpayer in violation of the provisions of section 6103, such taxpayer *may bring a civil action for damages against such person, and the district courts of the United States shall have jurisdiction of any action commenced under the provisions of this section.*" (emphasis supplied)

The Court resolved that:

> "some matters pertaining to the enforcement of the IRC are most appropriately resolved in the federal courts. . . ."

Id. 416 N.Y.S. 2d at 972, nevertheless, the cause of action brought before it did not bear:

> "the interpretation of complex federal tax laws, rules or regulations which might properly be left to the federal tribunals which have a familiarity and expertise with such matters."

The Court assumed jurisdiction.

Applying these rules, in the action for treble damages under RICO no reason exists for "federal" expertise or the interpretation of complex problems of federal laws or regulations which might justify the exclusive federal jurisdiction. To the contrary, RICO constitutes a *federal* assistance or cooperation given to *States* to combat their problems with organized crime.

RICO deals with offenses and violations of penal laws and this is a matter which historically has been of the incumbency and competence of *the states* rather than of the federal government. The federal penal law is the exception; and because of their special nature, federal offenses are of the exclusive con-

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*Section 7917 of the Internal Revenue Code, 26 U.S.C.

cern of the federal government under the functions conferred thereto by federal law and the Constitution.

In view of the foregoing, which historical reason exists to, by *implication*, resolve that jurisdiction over these claims should be *exclusive* of the federal government? Simply, none. Should Congress' intention had been exclusiveness, it would have been very simple and easy to so expressly state.

CONCLUSION

No reason exists to sustain that, in causes of action under RICO, jurisdiction is exclusive of federal courts.

WHEREFORE, it is respectfully requested from this Honorable Court to dismiss the twenty-sixth affirmative defense of defendant, General Electric, by which it alleges lack of jurisdiction of this Honorable Court over the cause of action under RICO brought by plaintiff in this case.

The undersigned attorney CERTIFIES: That he has sent a true and exact copy of the preceding Memorandum to Rafael Escalera Rodriguez, Esq., P.O. Box 13954, Santurce, Puerto Rico 00908; Alex Gonzalez, Esq., G.P.O. Box 6123, San Juan, Puerto Rico 00936; and to Miguel A. Gimenez Munoz, Esq., First Federal Building, Suite 1001, Stop 23, Santurce, Puerto Rico 00909.

San Juan, Puerto Rico, September 10, 1981.

FRANCISCO PONSA FELIU
FRANCISCO PONSA FLORES
EDDA PONSA FLORES
LAWRENCE E. DUFFY
G.P.O. Box 4423
San Juan, Puerto Rico 00936-4423
Tel. 751-7295

/s/ By: (Sgd.)
FRANCISCO PONSA-FELIU

— (overleaf) —

(Seal of the
Superior Court,
San Juan Part)

CERTIFICATE

I CERTIFY that this is a true and exact copy of the original which appears of record, and at the request of _____ _____ I issue these presents

[X] upon payment of fees

[ ] for official use, free of charge

/s/ By DORIS MORALES
Clerk

August 18, 1983

/s/ By (Illegible)
Clerk

Four internal revenue stamps affixed and cancelled:

A5342002 — $5.00
A6336043 — 50¢
A1619692 — 10¢
A1619687 — 10¢

APPENDIX L

IN THE SUPREME COURT OF PUERTO RICO

NO. 0-82-96

PUERTO RICO ELECTRIC POWER AUTHORITY,
Plaintiff and Respondent,

v.

GENERAL ELECTRIC COMPANY,
Defendant and Petitioner.

CERTIORARI

Division composed of Mr. Justice Torres Rigual, as President of Division, Mr. Justice Martin and Mr. Justice Diaz Cruz.

RESOLUTION

San Juan, Puerto Rico, March 31, 1982

The Clerk of this Court is hereby ordered to issue a writ of certiorari addressed to the Superior Court, San Juan Part, Hon. Salvador Acevedo Colon, Judge, to submit, at the earliest, to the Office of the Clerk of this Court the original record, or ceritified copy thereof, of civil case No. 81-1111, *Electric Power Authority* v. *General Electric Co.*, to which the petition filed herein makes reference, in order to review the resolution issued by said Court on January 15, 1982 and to pass a resolution in accordance with law.

It was so agreed by the Court and certified by the Clerk.

/s/ Lady Alfonso de Cumpiano
LADY ALFONSO DE CUMPIANO
Chief Clerk

APPENDIX M

IN THE SUPREME COURT OF PUERTO RICO

No. 0-82-96

PUERTO RICO ELECTRIC POWER AUTHORITY,
Plaintiff-Respondent

vs.

GENERAL ELECTRIC COMPANY,
Defendant-Petitioner

MOTION FOR RECONSIDERATION

TO THE HONORABLE COURT:

Comes now plaintiff, Puerto Rico Electric Power Authority, represented by its undersigned attorneys, and very respectfully alleges and prays:

On May 4, 1983, this Honorable Court entered Judgment in the above case, which Judgment was notified to the parties on May 6, 1983. The aforesaid Judgment reverses the resolution under review and orders the lower court to dismiss the cause of action under RICO (Racketeer Influenced and Corrupt Organization Act, 18 U.S.C.A. Section 1961 *et seq.*) The decision does not determine whether the Puerto Rican courts have concurrent jurisdiction with federal courts to entertain civil actions for treble damages under RICO, but rather invokes the "valid excuse" doctrine, under which state courts may decline to decide claims brought under federal statutes if they have a valid excuse which does not discriminate against the application of federal laws. As it appears from the Judgment, the valid excuse in this case seems to have two aspects: 1) that appellee filed an action under RICO before the federal forum, which the Court considers is in a procedural stage more advanced than the captioned action; 2) that "in the federal forum the parties have the constitutional benefit safeguarded by the Seventh Amendment of the Constitution of the United States of having a trial by jury in civil cases."

Plaintiff-respondent respectufully requests from this Honorable Court to reconsider its Judgment on the following grounds:

1. Neither the action brought before the federal court, nor the right to have a trial by jury before said court, constitute the valid excuse that permits a state court to refuse to entertain a claim filed under the federal law, as said doctrine has been developed and applied by the United States Supreme Court. Said doctrine is inapplicable to the instant case and its principles neither authorize nor justify the Puerto Rican Court to decline to entertain the claim under the circumstances of the captioned case.

2. The conclusion that the proceedings in the claim brought before the federal forum are in a more advanced stage than the captioned case is erroneous.

3. The fact that in Puerto Rico does not exist a right to trial by jury in civil cases is not basis for the local court to refuse to entertain claims under federal law. Said decision is contrary to other decisions of this Honorable Court; it has the effect of eliminating concurrent jurisdiction in Puerto Rico, and constitutes a discrimination against the application and enforcement of federal laws in Puerto Rico.

I. Valid Excuse Doctrine

It is the established general rule that state courts must hear and adjudicate claims brought under the provisions of federal laws whenever they have concurrent jurisdiction with the federal court. This is so independent from the fact that a similar suit has been filed and is pending before the Federal Court.*

By way of exception and under the specific circumstances that we shall discuss hereinafter, the United States Supreme Court has allowed state courts to decline to entertain claims

*For cases supporting this rule, see Plaintiff-Respondent's brief of August 27, 1982, pages 21 and 22.

under federal statutes whenever there exists a "valid excuse" which does not discriminate against the application of federal laws. What constitutes a "valid excuse" clearly appears from the cases which have dealt with said doctrine, including the cases cited in the Judgment by this Honorable Court, which cases shall be briefly discussed hereinbelow:

In *Missouri ex rel Southern Ry. Co.* v. *Mayfield*, 340 U.S. 1, 95 L Ed 3 (1950), plaintiffs were *non-residents* of the State where the action was filed and the accident from which it arose occurred *outside* that State. The local law and policy of the State allowed access to the court to its residents with preference over its non-residents. The United States Supreme Court resolved that concurrent jurisdiction of the federal law (in said case the Federal Employers' Liability Act) does not compel the state court to adjudge a case which otherwise it would not have adjudged because of the non-resident plaintiff's lack of access thereto.

In *Testa* v. *Katt*, 330 U.S. 386, 91 L Ed 967 (1947), plaintiff was a *resident* of the state where he prosecuted the action and defendant was engaged in the automobile business in said State. The state court refused to enforce the federal statute because it was a penal law. The United States Supreme Court decided that state courts cannot refuse to entertain claims arising from a valid federal law, including penal laws, when the jurisdiction of said state court would be appropriate and adequate according to local law.

In *McKnett* v. *St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 78 L Ed 1227 (1934), the United States Supreme Court held that the state court had to entertain the case because its ordinary jurisdiction was appropriate to enforce the right claimed and it was invoked pursuant to the rules of procedure of said court. The Court expressed that the state court's denial to entertain the case cannot be based only on that the claim was brought under a federal law.

In *Douglas* v. *New York, New Haven & Hartford RR Co.*, 279 U.S. 377, 73 L Ed 747 (1929), the United States Supreme

Court again analyzed the local statute and resolved based on what said statute established. A resident of Connecticut brought the action in New York for an accident occurred in Connecticut. The local statute of New York authorized the dismissal of cases brought by non-residents. The Court sustained the local statute, stating that concurrent jurisdiction does not bind state court to entertain a case over which it would not have had jurisdiction under local statutes.

Finally, *Mondow* v. *New York, New Haven & Hartford RR. Co.*, 223 U.S. 1, 56 L Ed 327 (1912), establishes the same principle discussed in the preceding cases:

> "We conclude that rights arising under the act in question may be enforced, *as of right*, in the courts of the states when their jurisdiction, as prescribed by local laws, is adequate to the occasion." (at U.S. 59, L Ed 350).

The commentaries of 1 *Moore's Federal Practice*, Secs. 0.6(3) (page 237), 0.201 (page 2015) and 0.204, gather and reiterate the same doctrine of the cases above discussed, which doctrine can be summarized as follows: Whenever a state court, according to local laws, has adequate and appropriate jurisdiction to entertain a federal cause of action, said state court has the obligation to entertain jurisdiction over the federal claim and cannot refuse to enforce a law of the United States, although said law be of a penal nature. If it refuses to entertain jurisdiction, it should be under circumstances which do not discriminate against the federal claim. The result of this doctrine is that concurrent jurisdiction does not have the effect of enlarging the state court jurisdiction to resolve matters which are extraneous thereto.

The Redish and Muench* article cited in the Judgment of this Honorable Court carefully discusses and analyzes the

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*"Adjudication of Federal Cases of Acti i State Courts," 75 Mich. L. Rev. 311, 346-361.

cases related to the valid excuse doctrine and arrives at the following conclusion:

> ". . . there is a valid excuse for refusing to entertain federal causes of action only where there exists an express and articulated bona fide state policy relating to judicial administration, which does not discriminate against rights created by federal law and which will not likely be used to frustrate the congressional policy of having federal claims heard in state court." (at page 358).

According to the cases and authorities cited,** under the principles and the valid excuse doctrine, no valid reason exists which would justify this Honorable Court's refusal to entertain the case of caption. In Puerto Rico, the court of first instance is of general original jurisdiction,* and, undoubtedly, Puerto Rican courts have jurisdiction to entertain actions of the nature herein involved, to wit, a claim for damages caused by fault and/or negligence. Much less can it be sustained that the state forum is not the convenient one. Plaintiff is a public corporation and an instrumentality of the Commonwealth of Puerto Rico; the contract between plaintiff and General Electric was executed in San Juan, Puerto Rico, to be complied with in Puerto Rico; the auction was held in San Juan and General Electric participated in said auction in San Juan; and plaintiff's officer to whom General Electric paid the bribe, as a result of which it obtained the adjudication of the bid, was residing in San Juan and it was there where he exercised his functions.

**The judgment also cites Wright and Miller 16 *Federal Practice and Procedure*, Sec. 4024 (page 718), which recognizes and discusses the same principles, and, lastly, *Martinez* v. *California*, 44 U.S. 277, 284, N. 7; 62 L Ed 2d 481, 488 N. 7, wherein the United States Supreme Court states:

> "We note that where the *same type of claim, if* arising under state law, *would be enforced in the state courts*, the *state courts are generally not free to refuse* enforcement of the federal claim."

*Act No. 11 of July 24, 1952, Sec. 10 (4 L.P.R.A., Section 62).

No statute or policy—of jurisdiction, venue or of judicial administration—exists in Puerto Rico denying plaintiff its right to bring its claim before the Puerto Rican court under the facts involved in this case. Therefore, plaintiff cannot be denied said right under the valid excuse doctrine.

II. The Claim Before The Federal Forum

The conclusion that the proceedings in the claim before the federal forum at present are in a more advanced stage than in the captioned case is erroneous. Both claims are in their initial stages of discovery. See the table which is attached hereto marked as Exhibit I. Neither of the two cases is beyond the said initial stages; in neither of the two cases have depositions been taken, nor have requests for admissions or additional interrogatories been served. Both cases are far from being ready for trial. In view thereof, according to law, dismissal cannot rely on that the proceedings in the federal case are in a more advanced stage.

The fact of the proceedings of a case being in a more or less advanced stage has been considered as a factor for a court to decline to entertain jurisdiction only when in one of the two cases just the complaint has been filed; or when in one of the cases almost all discovery proceedings have been completed and, thus, the case is ready for trial. The United States Supreme Court has expressed itself on this matter, although in another context, in *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, 51 L. W. 4156 (1983), and *Colorado River Water Conservation District* v. *United States*, 424 U.S. 800, 47 L Ed 2d 483 (1976). Neither does the case cited by this Honorable Court, *Barnett* v. *Baltimore & Ohio Railway*, 200 N.E. 2d 473 (1963), support the dismissal ordered. Said case is a manifestation of the valid excuse doctrine. The Court ordered the dismissal taking into consideration the local law, policy and procedures of the State of Ohio, pursuant to which the state courts may refuse to entertain a "transitory" cause of action arising outside of the state and brought by a non-resident. In other words, it was resolved that the concurrent

jurisdiction existing under the applicable federal law did not have the effect of enlarging or adding state jurisdiction where it did not exist under local laws. In that context, the court ordered the dismissal of the *second* action brought because there was still pending the action *previously* filed. In the instant case, the Honorable Court has ordered the dismissal of the action previously brought. Further, according to the *Barnett* decision, the Puerto Rican Court should entertain this cause of action, since, under its facts, the Superior Court of Puerto Rico has already acquired jurisdiction, pursuant to the provisions of Article 1802 of the Civil Code of Puerto Rico. The fact that this Court would assume jurisdiction over the action under the provisions of RICO does not have the effect of enlarging its jurisdiction nor over the policy of judicial administration of Puerto Rican Courts.

III. The Right To Trial By Jury

This Honorable Court states in its Judgment that ". . . in the federal forum the parties have the constitutional benefit safeguarded by the Seventh Amendment of the Constitution of the United States of having a trial by jury in civil cases, including actions under RICO.

Independent of whether or not the benefit of trial by jury in the United States District Court for the District of Puerto Rico is constitutional,* the absence of such benefit in the Puerto Rican forum cannot, according to law, result in the dismissal of the instant case. In the first place, we make reference to, and repeat, what we have discussed in our briefs as regards the right to trial by jury in federal actions of concurrent jurisdic-

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*The United States Supreme Court has resolved that the Seventh Amendment to the Constitution of the United States does not apply to Puerto Rico. *Balzac* v. *Puerto Rico*, 258 U.S. 298, 42 S. Ct. 343, 66 L Ed 627 (1921).

tion.** It has been firmly established that when said cases are tried before the state forum, the rules applicable thereto as regards jury are those of the state courts. In Puerto Rico, specifically this Court, has resolved that, when jurisdiction over a cause of action under federal law is concurrent and the case is prosecuted in Puerto Rico, where jury trial for civil actions is not available, the cases shall be tried without jury. *Garcia Mercado* v. *Superior Court*, 99 D.P.R. 293 1970. The statement made in said case and which has been cited by this Honorable Court in the judgment subject of this reconsideration, was made as part of the analysis that induced this Honorable Court to affirm the *denial* of trial by jury in said case which was filed before the Superior Court of Puerto Rico under the concurrent jurisdiction provision of the Jones Act.

In second place, the statement made in the Judgment is incompatible with the holding of this Honorable Court in the recent case of *Acevedo* v. *Collazo*, 82 J.T.S. 30 (1982), to wit, that jurisdiction over causes of action brought under the Civil Rights Act, 42 U.S.C.A. 1983, is concurrent. Said purely federal actions, for which there exists the benefit of trial by jury in the federal forum, are tried without jury in the Puerto Rican courts.

In third place, to use the existence of trial by jury in the federal court as a reason to refuse to entertain the instant case shall have the inescapable effect of *eliminating concurrent jurisdiction in Puerto Rico*. Every case bearing concurrent jurisdiction, brought before the Puerto Rican Court, is tried without jury, notwithstanding the right to trial by jury existing in the federal court.

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1) Opposition to Petition for Certiorari, dated March 15, 1962, pages 19-24.

2) Plaintiff-Respondent's Brief, dated August 27, 1982, pages 13-19.

3) Rejoinder Brief, dated November 15, 1982, pages 15-26.

What was resolved in *NSC International Corporation* v. *Ryan*, 531 F. Supp. 362 (1981) in no way alters the aforesaid statement. Such right exists in the federal forum, both for actions under RICO and the Civil Rights Act, as well as for innumerable other actions of concurrent jurisdiction. Should local courts refuse to entertain said actions due to the absence of jury in Puerto Rico, its effect would be to discriminate against the application of federal laws and the refusal of Puerto Rican courts to enforce said laws.

IV. Final Considerations:

1. Trial by jury in the federal suit was requested by plaintiff-respondent in the instant case, that is, by the same party invoking and alleging jurisdiction of the Puerto Rican forum. Said party is aware that the case in the Superior Court shall be tried without jury and has no objection thereto.

On its part, Defendant-Appellant has demonstrated its preference in that the case be tried before a court without jury and at no time it claimed its right to trial by jury. Moreover, it has requested transfer of venue alleging that it is impossible to find in Puerto Rico a disinterested and impartial jury.* In the memorandum accompanying said motion, defendant states: "Of course, if Plaintiff should withdraw its jury demand this motion will be rendered moot,"** which statement undoubtedly demonstrates that trial by jury is not demanded.

2. The administration and judicial economy of the Puerto Rican Court shall not be affected if this claim under RICO remains before it, inasmuch as the same basic facts shall anyway be heard in said court under Article 1802 of the Civil Code.

3. Finally, there is at present pending before the Federal Court a motion for transfer filed by defendant, General Elec-

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*See "Motion to transfer trial venue and Memorandum in support thereof," filed before this Court along with an Informative Motion, dated November 26, 1982.

**Id., page 16.

tric. If said motion is granted, plaintiff's claim under RICO would be transferred outside of Puerto Rico. The decision of this Honorable Court would then have the final effect of forcing plaintiff to litigate outside of Puerto Rico an action so intimately related to this forum. This Honorable Court, in the exercise of its discretion, should not permit such final effect.

WHEREFORE, it is respectfully requested from this Honorable Court to reconsider the Judgment entered and to declare that the Puerto Rican Court has jurisdiction over the claim under RICO; or, in the alternative, to declare that the dismissal is without prejudice.

Respectfully submitted.

San Juan, Puerto Rico, May 19, 1983.

I HEREBY CERTIFY: That a true and exact copy of this writ has been sent by certified mail to J. Saldana, Esq., P.O. Box 13954, Santurce, P.R. 00908 and to Jorge L. Izquierdo, Esq., G.P.O. Box 5032, San Juan, P.R. 00936.

A. Santiago Villalonga
Manuel Moreda Toledo
Santiago, Perez, Bermudez, & Bruno
G.P.O. Box 3706
San Juan, Puerto Rico 00936
Tel.: 754-2626

AND;

Francisco Ponsa-Feliu
Francisco Ponsa-Flores
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San Juan, Puerto Rico 00936
Tel.: 751-7205

(Sgd.)
A. Santiago Villalonga

(Sgd.)
Edda Ponsa-Flores

EXHIBIT I

DATE	PROCEEDINGS S. COURT	PROCEEDINGS FED. COURT
March 10, 1981	Filing of Complaint	
June ___, 1981	Answer to Complaint	
August 10, 1981	Answer to Complaint	
August 31, 1981		Filing of Complaint
September 8, 1981	Interrogatories	
November 12, 1982	Answer to Interrogatories	
January 12, 1982		Answer to Complaint
February 12, 1982		Answer to Complaint
August 4, 1982		Filing of Counterclaim
August 6, 1982		Answer to Complaint
September 24, 1982		Reply to Counterclaim
January 4, 1982		Interrogatories
May 2, 1983		Answer to Interrogatories

APPENDIX N

Estado Libre Asociado de Puerto Rico
Tribunal Supremo
Oficina Del Secretario
San Juan, Puerto Rico

CHIEF CLERK'S CERTIFICATE

I, Lady Alfonso de Cumpiano, Chief Clerk of the Supreme Court of Puerto Rico, DO HEREBY CERTIFY:

That the annexed documents are photocopies of the official translation from Spanish into English (said translation having been made under the authority of Act No. 87 of May 31, 1972) of the following documents which are part of record 0-82-96, *Puerto Rico Electric Power Authority* v. *General Electric Company*, the originals of which, in Spanish, are under my custody in this Office:

1. Petition for Certiorari dated February 22, 1982.
2. Opposition to Petition for Certiorari dated March 15, 1982.
3. Resolution dated March 31, 1982.
4. Judgment dated May 4, 1983.
5. Motion for Reconsideration dated May 19, 1983.
6. Resolution of June 3, 1983.

IN WITNESS WHEREOF, at the request of the interested party, and upon payment of the corresponding fees, I have hereunto set my hand and affixed the seal of this Court in San Juan, Puerto Rico, this 19th day of August 1983.

/s/ Lady Alfonso de Cumpiano
LADY ALFONSO DE CUMPIANO
Chief Clerk
Supreme Court of Puerto Rico

Estado Libre Asociado de Puerto Rico
Tribunal Supremo
Oficina del Secretario
San Juan, Puerto Rico

CHIEF CLERK'S CERTIFICATE

I, Lady Alfonso de Cumpiano, Chief Clerk of the Supreme Court of Puerto Rico, DO HEREBY CERTIFY:

That the annexed documents are photocopies of the official translation from Spanish into English of the Motion to Dismiss Jurisdictional Defense Under Rule 10.4, dated August 10, 1981, the Memorandum in Opposition to Codefendant General Electric Company's Motion to Dismiss for Lack of Subject Matter Jurisdiction, dated September 10, 1981, filed before the Superior Court of Puerto Rico, San Juan Part, and the Resolution issued by said Superior Court on January 15, 1982, in civil case No. 81-1111(908), Puerto Rico Electric Power Authority, Plaintiff, *v.* General Electric Company, etc., Defendants, said translation having been made under the authority of Act No. 87 of May 31, 1972, from copies duly certified by the Clerk of said Superior Court.

IN WITNESS WHEREOF, at the request of the interested party, and upon payment of the corresponding fees, I have hereunto set my hand and affixed the seal of this Court, in San Juan, Puerto Rico, this 19th day of August 1983.

/s/ Lady Alfonso de Cumpiano
LADY ALFONSO DE CUMPIANO
Chief Clerk
Supreme Court of Puerto Rico